

OS No. 257/2024

ORDERS

I. Background of the Application

1. The present application had been filed by the defendant under Section 10 of the Code of Civil Procedure, 1908, seeking to stay further proceedings in the present suit till the disposal of O.S. No.247/2010 pending before the Court of the Learned Civil Judge and JMFC at Devanahalli.

1.1 The present suit had been filed by the plaintiffs seeking the relief of partition and separate possession in respect of the suit schedule properties.

1.2 The defendant had contended that the subject matter involved in the present suit was already the subject matter of an earlier suit bearing O.S. No.247/2010, which was pending adjudication before the competent Court at Devanahalli, and therefore continuation of the present proceedings would result in parallel adjudication of the same dispute.

II. Facts stated in the Application

2. The defendant had stated that one Sri Muniyappa, son of Sri Muni Korchappa, who was the father-in-law of the present plaintiff, was originally the absolute owner of the suit schedule property.

2.1 It had been contended that the said Muniyappa had sold the suit schedule property in the year 1975 in favour of the mother of the original defendant, namely Smt.Kallamma, for valuable consideration and had delivered possession of the property to her.

2.2 It had further been stated that the said sale transaction had been acted upon, the revenue records had been mutated in the name of Smt. Kallamma, and she had exercised rights of ownership and had improved the property thereafter.

2.3 According to the defendant, after execution of the sale deed in the year 1975, the father-in-law of the present plaintiff had ceased to have any right, title or interest over the suit property, and the transaction was for the benefit of the family.

2.4 The defendant had further stated that the original extent of the property was one acre eleven guntas, out of which one acre had been purchased by the defendant and the remaining eleven guntas had been purchased by one Sri Satish Kumar. The said properties were stated to be bearing Survey Nos.21/2 and 21/6.

2.5 It had been further contended that one Smt. Marakka had already filed O.S. No.247/2010 before the Court of the Civil Judge and JMFC, Devanahalli, seeking partition and separate possession in respect of the very same properties.

2.6 The defendant had stated that Smt. Marakka was the sister of the father-in-law of the present plaintiff or in other words that Sri

Muniyappa, from whom the plaintiffs were claiming rights, was none other than the brother of Smt. Marakka.

2.7 It had been stated that during the pendency of the said suit, Smt. Marakka had expired and her legal heirs had been brought on record, and the present plaintiff Narayanamma had been impleaded as one of the legal heirs.

2.8 The defendant had contended that the present suit had been filed by suppressing the pendency of the earlier suit and that both suits involved the same properties, same parties and same cause of action.

2.9 It had therefore been contended that the present suit was not maintainable and was liable to be stayed under Section 10 of CPC or rejected in view of the principles contained under Section 11 of CPC.

III. Objections filed by the Plaintiffs

3. The plaintiffs had filed detailed objections denying the allegations made in the application.

3.1 The plaintiffs had contended that O.S. No.247/2010 had been filed by Smt. Marakka for partition and separate possession and that the said suit was still pending consideration.

3.2 It had been admitted that after the death of Smt. Marakka, the legal heirs had been brought on record. However, it had been contended that pendency of the earlier suit would not prevent the plaintiffs from prosecuting the present proceedings.

3.3 The plaintiffs had further contended that the present application had been filed only with an intention to delay the proceedings and to harass the plaintiffs. It had therefore been prayed that the application filed under Section 10 of CPC be rejected.

IV. Material available on record

4. During consideration of the application, the certified copies of the order sheet and plaint in O.S. No.247/2010 had been produced before the Court.

4.1 On perusal of the plaint in O.S. No.247/2010, it had appeared that Smt. Marakka had filed the said suit seeking partition and separate possession in respect of the very same properties.

4.2 The records had further disclosed that Smt. Kallamma, who was the original defendant in the present proceedings, had also been arrayed as defendant No.3 in the earlier suit.

4.3 The records had also disclosed that Sri Muniyappa was the brother of the original plaintiff Smt. Marakka and was the person through whom the present plaintiffs were claiming rights.

4.4 It had further appeared that the present plaintiff Narayanamma had been brought on record as plaintiff No.4 in O.S. No.247/2010 as legal heir of the deceased Smt. Marakka.

4.5 Thus, the earlier suit was shown to have involved the same properties, substantially the same parties and the same claim relating to partition and entitlement over the suit schedule properties.

IV. Arguments

5. The learned counsel for the defendant had submitted that the earlier suit was already pending concerning the same properties and that the plaintiffs had deliberately filed the present suit without disclosing the pendency of the earlier proceedings.

5.1 It had been argued that permitting both suits to proceed simultaneously would result in conflicting findings regarding title, possession and entitlement to share in the same properties.

5.2 The learned counsel for the plaintiffs had submitted that both suits could proceed independently and that there was no legal bar for continuation of the present proceedings.

5.3 The plaintiffs had relied upon the contention that the present application was filed only to delay the proceedings.

VI. Points for Consideration

- 1. Whether the defendant had made out sufficient grounds to stay the present proceedings under Section 10 of the Code of Civil Procedure, 1908?*

VII. Findings on Point No.1

6. The burden of establishing the applicability of Section 10 of CPC rested upon the defendant.

6.1 Section 10 of CPC provides that no Court shall proceed with the trial of any suit in which the matter directly and substantially in issue is

also directly and substantially in issue in a previously instituted suit between the same parties or parties claiming under them, pending before a competent Court.

6.2 In the present case, the materials placed on record had established that O.S. No.247/2010 was instituted prior to the filing of the present suit.

6.3 The earlier suit had been filed seeking partition and separate possession of the same schedule properties.

6.4 The present proceedings also related to partition and separate possession of the very same properties.

6.5 The records further disclosed that the present plaintiff Narayanamma was already a party in O.S. No.247/2010 as a legal heir of the deceased plaintiff.

6.6 Therefore, the plaintiffs in the present suit were claiming rights through the same branch and source of title involved in the earlier proceedings.

6.7 The contention of the plaintiffs that both suits could continue independently could not be accepted, since adjudication of the entitlement to share, validity of the sale transaction and rights arising out of the alleged family properties would directly affect the issues involved in both proceedings.

6.8 The object of Section 10 of CPC was to prevent parallel trials and conflicting decisions by competent Courts.

6.9 In the present case, the continuation of the subsequent suit would amount to duplication of proceedings concerning the same properties and same claim.

6.10 Further, when the earlier suit was already pending, the plaintiffs were at liberty to seek appropriate reliefs, amendment of pleadings or inclusion of their claim in the said proceedings, instead of instituting a fresh suit on the same cause of action.

6.11 The subsequent suit therefore did not disclose an independent cause of action requiring separate adjudication.

Accordingly, Point No.1 was answered in the affirmative and I proceed to pass the following;

ORDER

The application filed by the defendant under Section 10 of the Code of Civil Procedure, 1908, is allowed.

The further proceedings in the present suit are stayed till disposal of O.S. No.247/2010 pending before the Court of the Learned Civil Judge and JMFC at Devanahalli.

It is observed that the plaintiffs shall be at liberty to seek appropriate reliefs in the said pending proceedings, if so advised.

In view of the pendency of the earlier suit concerning the same properties and substantially the same issues, continuation of the present proceedings would serve no

purpose and may result in conflicting adjudication.

Accordingly, the present suit shall remain stayed subject to the outcome of O.S. No.247/2010.

*(Dictated to the Stenographer on computer, typed by her, revised, corrected and then pronounced by me in the open Court on this the **15th day of June, 2026.**)*

Sd/-

***Prl. Senior Civil Judge & J.M.F.C
Devanahalli.***