

i. Provision under which the application is filed	IA.No.5 UNDER SECTION 151 of CPC BY DEFENDANTS.
ii. Relief sought for	SEEKING TO CLUB THIS SUIT WITH O.S. No.64/2021
iii. The date on which the application is filed	6.10.2023
iv.Number of the application	IA. No.5
v. The date on which the objections are filed by different opponents	OBJECTIONS FILED BY THE PLAINTIFFS ON 16.02.2024
vi. The date on which the orders were passed on the said application	11.12.2024

ORDER ON IA.NO.5 UNDER SECTION 151 OF CPC FILED
BY THE DEFENDANTS.

The present application is filed by the defendants when the matter was posted for further cross-examination of PW.1. The defendants have filed IA No.5 under section 151 C.P.C. with a prayer to this Court to kindly club O.S. No.64/2021 with this suit for the purpose recording of evidence of the plaintiffs and defendants in the interest of justice and equity.

2. In the memorandum of facts, it is stated that the plaintiff has filed the present suit for possession of the suit schedule property. It is stated that the defendant No.1 has denied the facts of the suit and filed a suit for specific performance of the contract to execute a Registered Sale deed, as the plaintiff's husband has executed the sale agreement in favour of the husband of the defendant No.1. It is stated that the facts of the both the suits is on the same schedule properties and parties are also same and issues framed are also the same. Hence, to avoid the repetition of evidence and marking of the same documents the present application is filed by the defendant. The defendants have stated that if this suit is clubbed for the purpose of evidence no hardship is caused to the plaintiff and defendants and also helpful this Court for all the proceedings. By stating all these grounds the defendants have prayed to club the O.S. No. 64/2021 to this suit in the interest of justice.

3. The plaintiff has filed his objections to the said application contending that, the application is not maintainable either in law or on facts and this application only to drag on the proceedings, and not produced any affidavit along with the application to prove the grounds. Therefore, the defendants have no authority to maintain the position that the said original suit No. 64/2021 should be clubbed with this suit. The relief sought in both the said suits is different and there is no legal validity to entertain this suit. The defendant's application is barred by time and application is not valid in law as it changes the cause of action and the form of the pleading. Hence, the plaintiff has prayed to dismiss the present application with exemplary costs.

4. Heard and perused all the documents on record.

5. The points that arise for my consideration are:

1. Whether the applicants/defendants have made out grounds to allow the application?

2. What Order?

6. My answers to the above points are as under:

Point No.1: In the Affirmative,
Point No.2: As per the final order,
for the following:

REASONS

7. Point No.1: The present suit was filed by Smt.Mariana D'Souza and others against the deceased Smt.Juliyana Fernandies and others for a direction to the defendants to handover the possession of the suit schedule property to the plaintiffs and also to restrain the defendants from cutting the standing trees in the suit schedule property and from causing damage to the suit schedule property, for court costs and other reliefs deemed as fit by the Court. In this suit the issues were framed by this Court on 8.1.2020. Issue No.3 is framed in the respect of the Sale Agreement dated 10.02.1987.

8. On the other hand OS.No.64/2021 was filed by the deceased Juliyana Fernandies and others against the defendants Smt.Mariana D'Souza and others for the relief of Specific Performance and permanent Injunction in respect of the suit schedule property based on a Sale Agreement dated 10.02.1987. Further the records reveal that the issues were framed by this Court on 15.09.2022.

9. In the present suit the matter is posted for further cross-examination of PW.1 finally and in OS.No.64/2021 the matter was posted for further chief of PW.1. At that stage the defendants in OS.No.64/2021 have filed IA.No.2 under Section

151 of CPC to reopen the case and IA.No.3 under Order 13 Rule 8 of CPC R/w Section 33 and 35 of the Karnataka Stamp Act praying this Court to impound Ex.P1 and collect the duty and penalty in respect of Ex.P.1. The plaintiffs have common objections to IA.No.2 and 3 after hearing both sides partly on IA.No.2 and 3, the matter is posted for further hearing on IA.No.2 and 3 in OS.No.64/2021.

10. It is pertinent to note that the suit schedule property in both the suits is one and the same and the parties are also the same. Further in the written statement filed by the defendant No.1 in OS.No.8/2019, a counter claim has been made by the defendant No.1 contended that since the husband of the plaintiff No.1 had executed the sale agreement by receiving the entire sale consideration and also handed over the possession of the schedule property of the defendant No.1 and the defendant No.1 has developed the suit schedule property by investing huge amount the defendants being the legal heirs of Lawrence Gregory Fernandies, they are entitled for the relief of the Specific Performance directing the plaintiffs to register the schedule property in favour of the defendants.

11. Therefore it is clear that the subject matter of the both the suits is the same property and the same agreement of sale dated 10.02.1987. After considering the circumstances of the case, I am of the opinion that if the both suits are clubbed it would not cause much hardship, but however if the present application is rejected, then any judgment made in one suit would directly or indirectly effect the outcome of the other suit and hence, Point No.1 is answered in the Affirmative.

12. Point No.2: With these observations I proceed to pass the following;

ORDER

IA No.5 filed by the defendants under Section 151 of CPC is hereby allowed on costs of Rs.200/- and O.S. 8/2019 is clubbed with O.S.64/2021.

The case has been posed for further cross of PW.1 finally in OS.No.8/2019 and in OS.No.64/2021 the matter is posted for further hearing on IA.No.2 and 3.

Call on 22.01.2025.

Sd/- 12.12.2024.
Civil Judge & JMFC,
Koppa.