



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

DATED: THIS THE 12th DAY OF SEPTEMBER 2023

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Addl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 2/2019

BETWEEN :

Sri.Prabhakara
S/o Late P.Ramadas Bhatta,
Aged about 59 years,
R/o No.B. 124 KIOCL Town Ship,
Kavoor, Mangalore 575015. *...Plaintiff*

(By Sri. T.M.Krishna Murthy, Adv.)

AND :

Sri.M.R.Mruthyunjaya
S/o Late P.Ramadasa Bhatta,
Aged about 45 years
R/o Mavinkare Village,
Kalasa Post, Mudigere Taluk. *...Defendant*

(By Sri.K.A.Mohith, Adv.)



PARTIES ON I.A.NO.IV

BETWEEN :

Sri.M.R.Mruthyunjaya

... *Applicant*

AND :

Sri.Prabhakara

...*Opponent*

i	Provision under which the application is filed	Section 10 of CPC
ii	Relief sought for	Stay of Suit
iii	The date on which the application is filed	21.01.2023
iv	Number of the application	IV
v	The date on which the objections are filed by different opponents	23.02.2023
vi	The date on which the orders were passed on the said application	12.09.2023

(Vishwanath.A)
Addl. Civil Judge & JMFC,
Mudigere.

**ORDERS ON I.A.NO.IV**

The defendant has filed the present application during the stage of cross examination of PW1. The present application is filed under Section 10 of CPC seeking stay of the present suit till the disposal of RSA No.1734/2009 on the file of Hon'ble High Court of Karnataka.

2. In support of the present application learned counsel for defendant has filed memorandum of facts submitting that the case of plaintiff is that the land measuring 3 acres in Sy.No.503/2 of Mavinakere Village belongs to him having acquired the same through gift made by his father. On the other hand the case of defendant is that the said land is joint family property and the father of plaintiff had no right to gift the said land to the plaintiff. The said gift deed was challenged in O.S.No.149/1999 which later came to be dismissed thereafter the defendant has preferred an appeal in R.A.No.173/2011 before the Senior Civil Judge, Chikkamagaluru which also came to be dismissed. Now 2nd appeal in RSA No.1734/2009 is pending adjudication before Hon'ble High Court of Karnataka having got involved issue that whether the suit property is separate property of plaintiff or is it a joint family property.



3. It is also submitted that the defendant has filed suit in O.S.No.34/2004 for partition of the joint family properties against the plaintiff which also included suit schedule property. In the said suit it has been held that the defendant is entitled for a share in the suit properties therein and also held that the share of defendant over the land bearing Sy.No.503/2 is subject to the result of RSA No.1734. Thus, the right of the plaintiff over the suit property is not settled and it cannot be held that the plaintiff is in absolute possession of the suit property. On these averments, the plaintiff has sought for allowing the application.

4. On the other hand, the plaintiff has filed his statement of objections to the present application wherein contended that the present application is not maintainable and the same is not accompanied with an affidavit. Though it is already cleared from the judgment in O.S.No.149/1999 and R.A.No.173/2011 that the defendant has got no right over the suit property, the defendant has filed the present application stating that appeal in R.S.A.No.1734/2009 is pending before Hon'ble High Court of Karnataka, without producing any order of stay granted by the Hon'ble High



Court of Karnataka. On these averments, the plaintiff has sought for rejection of application.

5. In view of the above rival contentions of both the parties, the following points do arise for consideration:

1. Whether the defendant has made out that the matter in issue in the present suit is same as that in O.S.No.149/1999 against which appeal in RSA No.1734/2009 is pending adjudication on the file of Hon'ble High Court of Karnataka and the same is previously instituted the suit between the same parties?

2. What order?

6. Heard both side and also perused entire materials on record. Now, the findings of this Court on the above points are as follows.

Point No.1 : ***In the Negative,***

Point No.2 : ***As per final order
for the following:***

REASONS

7. POINT NO.1: This is the application filed seeking stay of suit on the ground that the matter in issue in the present



suit is same as that in the previously instituted suit in O.S.No.149/1999 which came to be dismissed and up held in R.A.No.173/2011 and now RSA No.1734/2009 is pending consideration before the Hon'ble High Court of Karnataka. On perusal of materials on record, it could be seen that the present suit is filed seeking bare injunction against the defendant with respect to the land measuring 3 acres in Sy.No.503/2 of Mavinakere Village, Kalasa Hobli.

8. On further perusal of certified copy of appeal memorandum in RSA No.1734/2009, it could be seen that the same is filed against the judgment and decree passed by Hon'ble Prl. Civil Judge, Mudigere in O.S.No.149/1999 and R.A.No.304/2006 on the file of Hon'ble Fast Track Court -II, Chikkamagaluru. The defendant herein is the appellant and plaintiff herein is respondent No.2 in the said appeal. Though the appeal memorandum discloses that the matter in dispute is the gift of suit property but there is no mention as to which property is the suit property in O.S.No.149/1999. On considering the matter in dispute in these cases, it could be seen that the present suit is based on possession and the suit in O.S.No.149/1999 is based on right and title over the suit property therein. Thus,



admittedly the matter in issue in this suit is not substantially same in the suit in O.S.No.149/1999. Therefore, the present case does not fall under the principal of *res-subjudice*. Hence, Point No.1 is answered in **Negative**.

9. POINT No.2: In view of the above findings on point No.1, this Court proceed to pass the following.

ORDER

***IA.No.IV filed by the Defendant
under Section 10 of CPC is rejected.***

***For cross-examination of PW1 by:
20.09.2023.***

(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 12th day of September, 2023).

(Vishwanath.A)
Addl. Civil Judge & JMFC,
Mudigere.

***BSM**