

KADG220000542020



IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., CHANNAGIRI

:: Present ::

Shri. Siddalingayya B.Gangadharamath
B.Com. L.L.B., (Spl)
Prl. Civil Judge and J.M.F.C.,
Channagiri.

O.S.No.13/2020

Dated this the 16th Day of July 2024

PLAINTIFF : Sri. Hanumanthappa
V/s

DEFENDANTS : Basappa and Others

I.A.NO.XIV

Applicant/Plaintiff : Sri. Hanumanthappa
V/s

Opponents/Defendants: Basappa and Others

ORDER ON I.A.No.XIV

Plaintiff filed the application under Sec.10 R/w Sec.151 of C.P.C., seeking for stay of the proceedings till disposal of Civil.Misc.No.309/2023 pending before the Hon'ble Prl. District and Sessions Court, Davanagere.

The application filed at the stage of cross examination of DW.1.

2. BRIEF FACTS OF THE AFFIDAVIT AS UNDER:-

The plaintiff has sworn the affidavit and stated that, O.S.No.11/2020 and the suit on hand are in respect of the same property. The subject matter and the parties of both the suits are one and the same and similar issues have been arisen. Thus, in order to avoid multiplicity of the litigation and to avoid different findings both the suits, the suit on hand needs to be stayed till disposal of Civil.Mise.No.309/2023. The same is filed for transfer of O.S.No.11/2020 pending before the Prl. Civil Judge and JMFC Court, Channagiri and O.S.No.13/2020 pending before First Addl. Civil Judge and JMFC Court at Channagiri. If this application is allowed no hardship would be caused to the other side, otherwise the plaintiff will be put to irreparable loss and legal injury. Thus, the plaintiff prays to allow the application.

3. OBJECTIONS FILED BY DEFENDANTS AS UNDER.

The defendants denied the entire contents of the affidavit filed in support of the application and

submitted that, the application of the nature is not tenable. The evidence of plaintiff has already completed and when the case has been posted for cross examination of DW.1, the plaintiff come up with the present application in order to dodge the trial of the proceedings. The plaintiff wants to get order then he could have perused before the Hon'ble District Court. Thus, the defendant prays to dismiss the application.

4. Based on the rival contentions raised by the respective parties, the following points would emerge for my consideration;

POINTS

1. Whether the plaintiff has made out grounds to allow the application?
2. What order?

5. Heard the learned counsels appearing for the plaintiff and defendants. Perused the records and on perusal of the same, my findings to above said points are as under :

POINTS

Point No.1 : In the Negative

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

REASONS

6. Point No.1:- Plaintiff filed the suit for the relief of declaration to declare him as owner in possession of the 3 Guntas of land encroached by the defendants and also for mandatory injunction against the defendant No.5 including the permanent injunction against the defendants. The plaintiff claimed that, the suit schedule property belongs to him and his name is appearing in the revenue records. The defendant No.5 encroached the area measuring East to West 100 feet and North to South 100 feet and made up unauthorized construction in it. In spite of repeated request he could not demolish or handover the possession of said encroached area and that cause of action the plaintiff filed the suit.

7. The defendants contested the matter by contending that, the Sy.No.15/2 of Kagathuru Village was acquired by the Government in the year 1947. In that regard, necessary publication was done in the Official Gazette. The said acquisition was for the purpose of manure pits to the villagers as the same was using. The plaintiff filed the suit by taking mistake and not taking undue advantage of the mistake of revenue officials as they have to discontinued the revenue records after acquisition of 38 Guntas of land

comprised in Sy.No.15. He also noted the several transactions held in respect of suit property between the defendants and others. Thus, the defendants pray to dismiss the suit.

8. The plaintiff has filed the instant application stating that, he filed miscellaneous petition before the Hon'ble Prl. District and Sessions Court, Davanagere and till disposal of the same he seeks for stay the trial of this suit. The basis for such miscellaneous petition can be looked into at paragraph No.3 of the affidavit. Wherein, he stated that O.S.No.11/2020 is pending before this court and O.S.No.13/2020 is pending before the Hon'ble First Addl. Civil Judge and JMFC Court, Channagiri. In fact the suit bearing O.S.No.13/2020 is pending before this court.

9. The plaintiff having contended for staying further trial of the suit, has adduced and produced his probable evidence before the court. When the matter stood for the cross examination of DW.1, the present application on hand is filed. Thus, it shows the intention of the plaintiff to drag the proceedings without any sufficient reasons and to do the same he has filed the present application on hand. Furthermore, the plaintiff has not produced either plaint or written statement, issues of O.S.No.11/2020 so as to consider

whether the subject matter in issue is also directly and substantially issue in the previously instituted suit between the same parties. However, the petitioner has also not produced petition filed before the Hon'ble District Court for what purpose he filed the petition and what are those grounds mentioned thereunder. In the absence of the same, the question of staying the trial of the suit would not arise at all. Moreover, the trial of this suit has already commenced and it is at the stage of conclusion. In these factual aspects and the progress of the matter, the application is devoid of merits and deserves to be dismissed. Accordingly, the **point No.1** held in the **Negative**.

10. Point No.2:- As a result, I proceed to pass the following:

ORDER

I.A.No.XIV filed under Sec.10 of CPC, R/w Sec.151 of C.P.C., is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, she transcribed, typed and corrected by me and then pronounced by me in the open court on this **16th day of July 2024.**)

Sd/-

(Siddalingayya B. Gangadharamath)

Date: 16.07.2024 Prl. Civil Judge & J.M.F.C.,

Place: Channagiri. Channagiri.