

ORDERS ON I.A.NO.IX

The defendant No.10 has filed the application U/s 10 of CPC praying this court to stay the suit proceedings pending disposal of RFA.No.86/2012 on the file of Hon'ble High Court of Karnataka.

2. On the other hand the plaintiff has resisted the application by filing the objection.

3. Heard arguments on both sides. Perused the I.A, affidavit and objection.

4. The plaintiffs have filed the suit against the defendants for declaration and injunction in respect of plaint schedule property on the basis of sale deed acquired by the ancestors.

5. On the other hand the defendants contended that already the suit OS.No.312/2002 was filed in respect of suit property for partition and same was partly decreed. Against which the D1(b) has filed RFA before the Hon'ble High Court of Karnataka. It is further stated that in the said appeal the present plaintiffs have impleaded as parties to the case. The matter is pending before the Hon'ble High Court of Karnataka in respect of the suit property.

6. On perusal of the Judgment and decree passed in OS.No.312/2002 it goes to show that earlier

the case was filed for partition in OS.No.312/2002 in respect of the suit property and now the present plaintiffs have filed the suit for declaration and injunction in respect of the same property. It is contended that the suit is not stayed, certainly it amounts to res-subjudice and there are chances of conflict of decision. Admittedly the present plaintiffs have impleaded in the appeal before the Hon'ble High Court of Karnataka. The present suit is subsequent suit to the OS.No.312/2002. The suit property in both suits are one and the same. Thus when the matter is pending before the Hon'ble High Court of Karnataka in regard to legal rights of the parties it is just and correct to stay the present suit pending disposal of the RFA, otherwise it amounts to res-judice and conflict of decisions. Thus, I proceed to pass the following;

ORDER

The I.A.No.IX filed U/s 10 of CPC by the defendant No.10 is allowed.

This suit is stayed pending disposal of RFA before the Hon'ble High Court of Karnataka.

No order as to costs.

(E. Chandrakala)
Senior Civil Judge & JMFC,
Harihar.