

ORDER ON IA No.II

This application is filed by the counsel for defendant No.3 U/s.10 r/w. Section 151 of C.P.C. to stay the proceedings in the suit till disposal of OS No.273/2023.

2. The defendant has filed affidavit stating that OS No.273/2023 is filed before II Addl. Civil Judge, Hubballi seeking the relief of declaration and injunction in respect of the properties and the documents as to it and parties in this suit are also parties in said suit. The plaintiffs and defendants No.1 and 2 are also the parties and subject matter of the suit herein is also a subject matter challenged in OS No.273/2023. OS No.273/2023 has been filed with an intention to frustrate the claim. The rights and interest and title of the parties is required to be decided and adjudicated in the prior suit pending between the parties. Unless and until the right and interest and title if at all of the parties in OS No.273/2023 are decided the relief sought and claimed in this suit could not be taken for adjudication. The matter in issue in this suit is directly and substantially in issue in the previously instituted suit hence, prayed the present suit cannot be adjudicated unless the right of the parties are established in OS

No.273/2023 and prayed to stay the proceedings in this suit.

3. The counsel for plaintiffs filed objections to the application contending that OS No.273/2023 was filed by defendant No.3 seeking declaration and injunction. It is totally different from this suit. The matter in issues are totally different from one and another. There is no ground or reasons to stay the proceedings of this suit and defendant No.3 was impleaded in this suit. There is no probabilities of to succeed. The application filed by defendant No.3 is nothing but abuse of due process of law. It is filed with malafide intention to protest the proceedings and to deprive the legitimate right of plaintiffs. Hence, prayed to reject the application.

4. I have heard both side. Perused materials on record. The following points arise for my consideration:

1. Whether the petitioner has made ground that there is matter in issue directly and substantially in issue in this suit between the same parties?

2. What order?

5. My answer to the above points are as under:

1. In the Negative.
2. As per final order,
for the following:

REASONS

6. **Point No.1:** The plaintiffs have filed this suit against defendants for partition and separate possession in respect of suit properties. The defendant No.3 has filed suit against plaintiffs and defendants No.1 and 2 for the relief of declaration and permanent injunction declaring that gift deed executed by defendant No.6- Hussainsab S/o. Aadamsab Bijapur is sham document. The plaintiff has become owner of the suit property by virtue of GPA dated 15.03.2022 and permanent injunction.

7. The defendant No.3 who was the plaintiff in OS No.273/2023 has filed suit for declaration. The present suit is filed by plaintiffs for partition and separate possession. The subject matter of the suit property is same, but relief sought in both the suits are different. In this regard I have relied the judgment of Hon'ble Supreme Court reported in 1996 (4) SCC 748, wherein it is held that, "suit filed by the appellant subsequent to a suit filed by the respondent

cannot be stayed, as causes of action in the two suits are entirely different and there is no common issue directly or substantially in issue in both the suits. Appellant had entrusted certain goods to respondent – carriers for transportation. However, respondent detained the goods in its custody and filed the suit claiming recovery of alleged dues payable by the appellant towards arrears of transportation charges. Appellant in its suit claimed recovery of goods lawfully entrusted and unlawfully detained by the respondent. Application filed by the respondent under Section 10 for stay of trial of appellant's suit was rejected.”

8. In the present case the nature of suit are different. The cause of action arose in OS No.273/2023 in February 2023 and the cause of action to this case arose in the first week of June 2024. The cause of action in the two suits are entirely different and there is no common issue directly or substantially in issue in both suits. Section 10 of C.P.C. ingredients are not fulfilled by the petitioner. Therefore, I answer point No.1 in **Negative**.

9. **Point No.2:** In view of my answer to the point No.1 in Negative, I proceed to pass the following:

ORDER

The application filed U/s.10 r/w. Section 151 of C.P.C. by the defendant No.3 is hereby rejected.

**Pri. Senior Civil Judge,
Hubballi.**