

IN THE COURT OF THE SENIOR CIVIL JUDGE
& JMFC KUNDGOL

Present

Sri . P.J. PARAMESHWARA B.Com., LL.B.
Senior Civil Judge and JMFC.,
Kungol

Dated 08th day of February 2022

OS.No.77/2021

Plaintiffs: Kumari Pratibha Karigoudra and 2 others.

Vs.

Defendant: Sri. Ravigoudra Karigoudra and 4 others.

ORDER ON IA No.3

The applicant/plaintiff has filed U/Sec.151 of CPC for staying of further proceedings in FDP No.12/2019. In affidavit filed in support of application, plaintiff No.3 sworn an affidavit and contended that, plaintiff No.1 and 2 are her minor children and they have filed the suit for partition and separate possession. The suit schedule properties originally belong to one Parvategouda who had two daughters i.e., defendant No.3 and 4 and son defendant No.1 and defendant No.2 is wife of Parvategouda. Defendant No.1 married plaintiff No.3 on 02.09.2010 and from their lawful wedlock plaintiff No.1 and 2 were born. After the birth of plaintiff No.2, defendants colluding with each other thrown out from

their house. In the meantime, the defendant No.1 developed illicit relationship with defendant No.5 and kept her in his house. The defendants colluding with each other have filed the suit in OS No.234/14 before this Court and obtained decree. Subsequently, they filed FDP 12/2019 without knowledge of the plaintiffs. The suit schedule properties are ancestral joint family properties and entitle for 3/12 share in the suit properties. The revenue records of suit property stand in the name of defendants. On the basis of preliminary decree, the defendants trying to demarcate the suit properties and as such, it is necessary to stay further proceedings in FDP 12/2019. Therefore, plaintiffs prayed to allow the application.

This application is resisted by defendants adopting their written statement as objection. The defendant No.1 filed his written statement. The defendant No.3 filed written statement and the same is adopted by defendant No.2 and 4. It is the case of defendants that, since there was misunderstanding in their family, defendant No.2 and 4 filed a suit against defendant No.1 and his wife defendant No.5 in OS No.234/2014 for partition and separate possession and the suit was decreed on 23.09.2017 by allotting 1/4 share to defendant No.2 to 4 in the suit schedule properties. Subsequently, defendant No.2 to 4 filed FDP No.12/2019 against defendant No.1 and 5 for final decree and the same is pending before the Court. The defendants have also

contended that, the suit is bad for non-joinder of necessary parties and suit is not properly valued and paid correct court fee. The defendants further contended that, the plaintiffs have not made out prima-facie case. Therefore, the defendants prayed to dismiss the application.

2. In the light of the above rival contention of the parties, the following points that arise for my consideration are :

POINTS

1. Whether the plaintiffs have made out sufficient grounds for staying further proceedings in FDP No.12/2019 ?

2. What Order ?

3. Heard arguments and perused the material placed on record.

4. My answer to the above points are as follows:

Point No.1 : In the negative.

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

REASONS

5. Point No.1: It is the case of plaintiffs that, plaintiff No.1 and are children of plaintiff No.3. Plaintiff No.3 is wife of defendant No.1 and from their wedlock plaintiff No.1 and 2 are born. The suit schedule properties are ancestral joint family properties of plaintiffs and defendants. The defendants colluding with each other had filed the suit in OS No.234/2014 and obtained decree without knowledge of the

plaintiffs and subsequently, they filed FDP No.12/2019 for final decree. If the suit schedule properties are demarcated as per fraudulent decree, the plaintiffs will be put irreparable loss as the plaintiffs got share in the suit schedule properties which need to be determined in the present suit. Therefore, the plaintiffs pray to stay further proceedings in FDP No.12/2019. The plaintiffs have not stated the reason for not seeking the relief of stay in the said proceedings. Further, they have also not preferred any appeal against the judgment and decree passed in the suit. When the matter is still pending the plaintiffs could have the relief as the said proceeding instead of seeking relief in the present suit. Therefore, the stay of proceedings in the present case is not desirable. There are no reasonable grounds to stay further proceedings in the present application as FDP No.12/2019 is still pending. Hence, Point No.1 is answered in the **negative**.

8. Point No.2: In view of the discussion made above and findings given on Point No.1, I proceed to pass the following:

ORDER

IA No.3 filed U/Sec.151 of CPC is hereby
dismissed.

No order as to costs.

Sd/-
Senior Civil Judge & JMFC
Kundgol.