

ORDERS ON I.A.No. 5

When the case was posted for arguments on I.A.No.4, the defendant has filed I.A's Nos.5 U/Sec.151 of CPC praying to club the suit with O.S.No.700/2023 on the file of the Court.

In the affidavit annexed to the I.A.No.5, it is stated that, the plaintiff has filed the suit against the defendant for the relief of permanent injunction. The defendant herein has filed one more suit in O.S.No.700/2023 against plaintiff herein with respect to suit schedule property for the relief of declaration and permanent injunction. Suit Survey number, subject matter and cause of action in both suit are one and the same and it is not necessary to lead evidence separately. Hence, prayed to allow the applications.

On the other hand the plaintiff has filed the objection and stated that, the application is not maintainable either in law or facts. The facts stated in the affidavit are all false and filed the present application to drag on the proceedings. If, the application is allowed, subject matter and cause of

action will change and present suit is contradicted to O.S.No.700/23. Hence, prayed to dismiss the applications.

Heard the learned counsel for the plaintiff and defendant.

Points for consideration:

1. Whether the defendant has made out grounds to allow the I.A.No.5 U/Sec.151 of CPC?
2. What order?

Answer of the Court to the above points are as follows:

Point No.1 : In the Affirmative

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

:: REASONS ::

Point No.1: I have already narrated the facts stated in the affidavit annexed to the application and also objection filed by the plaintiff.

By perusal of records, they appear that, the plaintiff has filed the present suit against the defendants for the relief of permanent injunction and defendant herein has filed one more suit in O.S.No.700/23 against plaintiff herein for the relief of declaration and permanent injunction with respect to same schedule property. The parties,

cause of action and subject matter in both suits are one and the same. But, reliefs in both suits are totally different. If the title is proved in declaration suit, possession will also prove in the declaration suit. Hence, it is necessary to club the present suit with O.S.No.700/2023 in order to come to proper conclusion and in order to avoid multiplicity of proceedings. Hence, point No. 1 is answered in the affirmative.

Point No.2: As per the following order:-

ORDER

The I.A.No.5 filed by the defendant is allowed.

NO order as to costs.

This suit is clubbed with O.S.No.700/2023 on the file of the Court.

**(Sri. Raghu.M.)
II Addl. Civil Judge & JMFC,
Arakalgud.**

ORDERS ON I.A.No. 6

When the case was posted for arguments on I.A.No.4, the defendant has filed I.A's Nos.6 U/o. 7 rule 14 of CPC seeking permission to produce the documents by condoning delay.

In the affidavit annexed to the I.A.NO.6, it is stated that, the plaintiff has filed the present suit against the defendants for the relief of permanent injunction. The plaintiff while filing the suit has not produced documents as stated in the plaint. Hence, the plaintiff is to be directed to produce the documents in support of averments made in para 2 of the plaint. Hence, prayed to allow the applications.

On the other hand, the plaintiff has not filed objections to the application.

Heard arguments.

Points that arise for consideration of the Court as follows:

1. Whether the defendant has made out grounds to allow I.A.No.6 U/O. 7 Rule 14 of CPC ?

2. What Order?

Answer of the Court to the above points are as follows:

Point No.1 : In the Negative

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

REASONS

Point No.1: The Court has already narrated the averments made in the affidavit annexed to the I.A.No.6.

By perusal of records, they appear that, the plaintiff has filed the suit against the defendants for the relief of permanent injunction with respect to suit schedule property and the plaintiff in the plaint, para No.2 has stated that, the suit schedule property originally belonged to Patel Kalegowda S/o. Thirumalegowda and said Patel Kalegowda had sold the suit schedule property in favour of paternal uncles by name Shettygowda and Kengegowda and father of plaintiff by name Javaregowda and his family members while dividing the suit schedule property has fallen to the share of Javaregowda. Later, in the year 1997-98 the plaintiff

and his brothers while dividing the suit schedule property has fallen to the share of plaintiff. In this regard, the defendant has sought to produce the partition deed before the Court. As per the Rule 14 of order 7 of CPC, the plaintiff has to produce the documents relied on in plaint. If, the plaintiff is not produced any documents in support of his pleadings, the plaintiff will not succeeded in the suit. As such the defendant cannot seek to issue direction to the plaintiff to produce the documents in support of his pleadings under order 7 Rule 14 of CPC and defendant shall file necessary application in different provision. Accordingly, point NO.1 is answered in the negative.

Point No.2: For the forgoing reasons, court proceeds to pass the following;

ORDER

The I.A.No.6 filed by the defendant is dismissed.

NO order as to costs.

**For plaintiff evidence by
09.01.2025.**

**(Sri. Raghu.M.)
II Addl. Civil Judge & JMFC,
Arakalgud.**