

ORDER ON IA No. 9

When the case was posted for cross examination of DW1, the Applicants/defendant No.7 has filed the present application Under Section 10 of CPC seeking stay of further proceedings of this case until disposal of OS. No.144/2021 pending on the file of this court.

2. The application is accompanied by the affidavit of the applicant/defendant No.7 contending that, the plaintiffs have filed this suit for partition and separate possession, whereas the he has previously instituted a suit for specific performance of contract in

O.S. No.144/2021 pending on the file of this court against the all parties of this suit. Since the subject matter of previously instituted suit is directly and substantially the same as the reliefs sought in the present suit. Until disposal of the said suit, the proceedings of this case is to be stayed to meet the ends of justice.

3. Per contra, the plaintiffs and defendants No.2 to 5 have filed their separate objections to the application contending that, the present application is neither sustainable in law nor on facts and liable to be dismissed. It is further contended that, the subject matter of both suit are different and the present suit is for substantial relief of partition and separate possession, whereas the applicant has previously instituted a suit for bare specific performance of contract. It is also contended that, the extent of both suit properties and reliefs of both suit are also different. In such circumstances, the present application is not applicable and prayed to dismiss the application.

4. Heard arguments of counsel for either side. Memo with decision relied by the counsel for applicant taken on records. Perused application, counter and records.

5. The following points that would arise for my consideration are as hereunder;

POINTS

- 1.** Whether the defendant No.7 proves that, the present suit is directly and substantially in issue of OS No.144/2021.?
- 2.** What Order?

6. My findings on the above Points are as hereunder:

Point No.1: In the **Negative**.

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

REASONS

7. Point No.1:-

At the very outset it becomes incumbent upon this court to clarify that, the present suit is filed against the defendants for the relief of partition and separate possession and it is alleged that, the suit properties are ancestral and joint family properties, no kind of partition has ever taken place and defendants No. 1 to 6 refused to effect the partition of plaintiff's share. During pendency of the suit, defendant No.7 was impleaded claiming to be the sale agreement holder in respect of the suit property.

7.1. The applicant has contended that, he has instituted a previous suit for specific performance of contract in respect of the same suit property against the same parties in O.S. No. 144/2021.

The other defendants and plaintiffs have admitted the pendency of the previous suit. But, they have contended that, since this suit is for substantial relief of partition and separate possession, the same cannot be stayed as claimed by the applicant. Admittedly, the applicant has not produced any documents to show the nature of the suit, the extent of the suit property and parties arrayed in the previous suit. The plaintiffs have also contended that, the extent of the both properties are not one and the same, the present suit is filed for partition to the entire extent, whereas the applicant has filed the suit for specific performance of contract to the extent of vendors i.e., defendants No.2 to 6 herein.

7.2. As per Sec. 10 of CPC, subsequent suit can be stayed and shall not be proceed with the trial in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. In the case on hand, the applicant has previously instituted the suit for specific performance of the contract, the present suit is subsequently instituted suit. Admittedly, in the previous suit no counter claim was sought for partition and separate possession. Moreover, there is no materials before this court to show what issues were framed in the previous instituted suit.

7.3. During the course of arguments on application, the counsel for applicant has relied upon the decision of Hon'ble High Court of Madhyapradesh passed in the case of **Smt. Puja Sony V/s Dinesh Kumar & others**-Misc.petition No.600/2019. This court has carefully gone through the said decision and factual background of the case. In that case, similar application to stay the suit was dismissed by the trial court and later an application was filed to club the both suits, the same was also dismissed and the same was challenged before the Hon'ble High Court. Further, the reliefs sought in the both suits involved in the relied decision are entirely different to the present suit. Hence, this court is of the considered opinion that the facts and circumstances of the present case and the case relied by the counsel for applicant are entirely different and the same is not helpful to the case of the applicant.

7.4. Merely because a suit is pending earlier to this suit is not a ground to stay the proceedings. The subject matter and substantial issues in the previous suit for specific performance of contract and the subject matter and substantial issues in the present suit are not one and the same. In the previous suit, it is centers on enforcing a contract for sale between the parties to the agreement, while a partition suit of this nature seeks division of joint

family property among all co-owners. The cause of action to the both suits distinct and the cause of action to this suit is broader then the suit for specific performance of contract. Further, in the previous suit the relief of present suit for partition cannot be included without separate proof or separate claimants. Moreover, the plaintiffs have specifically contended that, the extent of both properties are not one and the same. In such circumstances, the application is deserves to be dismissed with heavy cost. Accordingly, I answer point No.1. in the **Negative.**

8. Point No.2- For the reasons stated above and considering the nature and circumstances of the case in hand. I proceed to pass the following;

ORDER

“IA. No. 9 filed by the applicants/defendants No.7 under Section 10 of CPC is hereby dismissed.

No order as to cost.

Call on for cross examination of DW1 from defendant No.7 as a last chance by; 09.12.2025.

Sd/-

Prl. C.J. & JMFC Court
Ranebennur.