

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 155/2016
Dated this 31st day of March, 2023

PLAINTIFF: Sunanda W/o Channaveerappa Ayyanavar,
Age : 43 years, Occ : Household work and
agriculture, R/o : Kalival, Tq : Savanur,
Dist : Haveri.

Vs

DEFENDANTS: Channavva W/o Shanmukappa Ayyanavar,
Age : 65 years, Occ : Household work,
R/o : Kalival, Tq : Savanur,
Dist : Haveri and others.

IA No.IV

Applicants: Fakkirappa S/o Nagappa Ayyanavar
(Defendant No.3)

Vs

Opponent: Channavva W/o Shanmukappa Ayyanavar
(Defendant No.1) & others.

ORDER ON IA NO.IV

The defendant No.3 and 4 have filed this application U/Sec. 151 of CPC for club the OS No.13/2019 in this suit.

2. The defendant No.3 Fakkirappa S/o Nagappa Ayyannavar has sworn in an affidavit accompanying with IA No.4, wherein he stated that the plaintiff filed this suit for partition and separate possession in respect of suit properties against him and family members. But in the year 93-94 as per family arrangement partition was effected. His brother Channaveerappa who is the husband of plaintiff was died due to HIV infection. During his life time he had taken care of him and given the treatment to him. The plaintiff was not come forward to taken care of her husband. Therefore, his brother executed registered Will in his favour on 12.08.2011 with love and affection. Therefore, he and his another brother have filed OS No.13/2019 before this Court for declaration and possession of the suit properties by virtue of will. Therefore, both present suit and OS No.13/2019 between same parties and in respect of same suit properties. Hence, to avoid conflict and divergent findings it is just and necessary to

club both the suits. Hence, he sought for club the both suits and proceed the case.

3. The plaintiffs filed objections by denying the contents of affidavit accompanying with IA No.4 and contended that application is not maintainable either in law or facts. This suit is for partition and separate possession and OS No.13/2019 is for declaration of possession. Therefore, the nature of the both suit is very different. Hence, he prayed to dismiss the application.

4. Heard both side and perused the materials on record.

5. The following points arise for my consideration:

POINTS

1) Whether the application made out grounds to allow?

2) What order ?

6. My answers to the above points are as follows:

Point No.1 : In the Affirmative.

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

:-REASONS:-

7. Point No.1 :- The plaintiff has filed this suit for partition and separate possession to the extent of her 6/20th share in the suit properties on the basis of succession against the defendants. The defendants have filed written statement by contending that in the year 1991 Partition took place between the defendants and husband of plaintiff. Thereafter, husband of plaintiff executed Will during his life time. Therefore, suit is not maintainable.

8. In the said case only the defendants would have counter claimed for declaration on the basis of Will. But even they have taken contention of will about execution of Will in the Written Statement not claimed the counter claim and filed separate suit in OS No.13/2019. The present plaintiff is defendant in the said suit. And some of the properties of present case are subject matter of the sit properties in OS No.13/2019. As such both suits relating to the same subject matter and between the same parties. If club the both suits and proceed it is easy to dispose the same and as well as easy to determine the rights of the parties. Though the nature of the suits

have been different but the subject matter of the suit in both cases are one and the same and between the same parties. Therefore, to avoid divergent findings it is just and necessary to club both the suits. OS No.13/2019 is for plaintiffs evidence. The present suit is for defendants evidence. When it is posted for defendants evidence the defendants have filed this application. No doubt the defendants have intended to drag the proceedings. But only on that point it cannot be rejected. If club the both suits the defendants can be examined including both suits and the plaintiffs are at liberty to cross-examination including both suit. It also save the time. Hence, it is necessary to club the both cases. **Therefore, this Court has answered point No.1 in the Affirmative.**

9. Point No.2 :- In view of the above discussion, I proceed to pass the following;

ORDER

The I.A. No.4 filed U/Sec.151 of CPC

by the defendant is hereby allowed.

**The present suit and OS No.13/2019
are hereby clubbed and parties
directed to proceed the both cases
simultaneously as present case main
case and OS No.13/2019 is clubbed case.**

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and
then pronounced by me in the Open Court on this the 31st day of March 2023)

CJ & JMFC., Savanur.

9. The plaintiff counsel relied on the decisions of the Hon'ble High Court of Karnataka in Pillamma and others Vs. Munithayanmma and others reported in (2015) 6 KANT LJ 350 and Smt. Sharadamma Vs. Kenchamma and others reported in (2006) 4 KCCR 2221.

I have gone through the above decisions. The ratio laid down in the above decisions clears that after conclusion of trial and after heard arguments of both side, at the stage of judgment or arguments the application under Order 18 Rule 17 cannot be permitted for re-open the evidence of parties. But in the present case the circumstances is very different. At the time of judgment this court framed additional issue in respect of mandatory injunction. Therefore when new issued has been framed it is the duty of the court to give an opportunity to the parties for further evidence or arguments on the additional issue. No doubt on the same day the defendant counsel submits no further evidence and arguments. But he has not submitted no further cross of PW.1. Therefore in respect of additional issue only if gives the opportunity for further cross of PW.1 no harm or prejudice will caused to the other side. The ratio laid down in the above decisions are not applicable to the case on hand. Even though the defendant filed application to drag the proceedings also the court is to give an opportunity subject to the condition for completing the cross-examination within limited

period. Therefore, this court has answered the **point No.1 in the Affirmative.**