

**IN THE COURT OF CIVIL JUDGE AND JMFC,, JEWARGI
AT JEWARGI.**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 14th day of March, 2022

O.S.No.73/2019

Abdul Razak : **Plaintiff**

(By Sri.B.B., Adv.,)

And

Chandrakanth and Another : **Defendants**
(By. Sri.S.B.K., Adv)

I.A No.4

Chandrakanth : **Applicant/Defendant No.1**

V/s.

Abdul Razak : **Opponents/Plaintiff**

ORDERS ON IA-4

The defendants have filed the application U/Sec.151 of CPC to club the this case and O.S.No.74/2019.

2. The brief averments of the affidavit filed in support of the application are as follows:-

That, the father of the defendants has purchased the land from the vendor and her daughters are signatories on the deed

and without impleading collusively with the support of the plaintiff, clandestinely created the sham and bogus document in favour two persons namely plaintiff in O.S.No.73/2019 and 74/2019 in respect of the land only to purchased extent by the father. For the proper adjudication the matter deserves to be clubbed because the land Sy.No.104 in the said suits and defendants are one and the same in both suit. If the application is allowed no prejudice or harm would caused to other side, on the other hand if not allowed he would be put to great hardship and involve into multiplicity of litigations as the rights so far involved in the immovable property. Hence prays to allow the application.

3. On the other hand learned counsel for the plaintiff filed objection to the application and contended that the defendants have filed the application with an intention to drag the case. The present suit and another suit i.e., O.S.No.74/2019 pending before this Hon'ble court is for perpetual injunction, in respect of different properties, filed by deferent plaintiffs against one defendant and defense of defendant in both suit is one and same. That the both suit have been filed by the plaintiffs against the defendant on different cause of action. Hence separate trial and judgment is necessary to avoid divergent opinion. Hence, question of clubbing the present suit with O.S.No.74/2019 does not arise. That no remedy would available to the defendant in present suit or in another suit i.e., O.S.No.74/2019. He has only a remedy to file separate suit on alleged suits agreements as

stated in his written statement. Hence prays to reject the application.

4. Heard the arguments. Perused the records.

5. The points that arise for my consideration are as follows:-

Point No. 1:- Whether the defendant No.1 proves that the application filed by his deserves to be allowed?

Point No.2 :- What order?

6. I answer the above points as follows:-

Point No.1 :- In the Affirmative,

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

REASONS

7. Point No.1:- Having heard and on perusal of material on record it reveals that the plaintiff by name Abdul Razak has filed this suit against the defendants by name Chandrakanth and Laxmikanth in respect of land bearing Sy.No.104/5 measuring 2 acres 2 guntas of Raddewadagi Village for the relief of perpetual injunction. Another suit O.S.No.74/2019 filed by one Mohammed Ayyub Khaji against the same defendants in respect of land bearing Sy.No.104/6 measuring 2 acres 2 guntas of Raddewadagi Village for the relief of perpetual injunction. When this case was set down for the orders of I.A.No.1 the defendants filed the present application and prayed to club this case with O.S.No.74/2019 as though the plaintiffs are different but subject

matter of the property i.e., survey number is one and the same and the vendor of the defendant is also one and the same. Hence for proper adjudication the matters are to be club.

8. On the other hand the learned counsel for plaintiff filed objection to the application that this suit property and O.S.No.74/2019 are different and plaintiff are different and cause of action is different. Moreover the defendants have no remedy in this suit, they have only remedy to file a separate suit on the alleged agreement of sale.

9. As discussed above in both the suits the defendants are one and the same the contention of the defendants are one and the same and the suit properties also split from a land bearing Sy.No.104 of Raddewadagi Village. According to the defendants they have entered into an agreement for sale with the vendee of the plaintiff in respect of land bearing Sy.No.104 measuring 4 acres 4 guntas. Therefore though the plaintiffs are different and the cause of action may be different the contention of the defendants in both suits are one and the same the documents also one and the same. Therefore it is necessary to lead single evidence in both suits for proper adjudication and single judgment is necessary to avoid divergent opinion. Hence both suits are required to be clubbed. Hence, I answer the Point No.1 in the affirmative.

10. Point No.2 :- For the above reasons I proceed to the pass the following :-

ORDER

I.A.4 filed by the defendants U/s 151 of C.P.C. is hereby allowed.

Consequently, this suit and O.S.No.74/2019 are clubbed and parties are permitted to lead common evidence in this suit.

In the facts and circumstances of the case no order as to cost.

(Dictated to the stenographer, transcribed by him and corrected by me, then pronounced in the open court dated this the 14th day of March, 2022)

(D.RAMESH)
Civil Judge & JMFC,
Jewargi.