

ORDER ON I.A.NO.III

The defendant No.10 has filed this application under Section 10 of CPC to stay the further proceedings in this case till disposal of O.S.No.298/2019 pending before the Court of Add. Civil Judge, Bangarpet which is a suit for partition filed earlier to this suit in respect of the same suit properties and between the same parties.

2. The application of the defendant No.10 is accompanied by an affidavit duly sworn to by him wherein, he has averred that he has filed a suit in O.S.No.298/2019 on the file of Court of Add. Civil Judge, Bangarpet for partition before filing of this suit and that the present plaintiffs No.1 to 4 are defendant No.2(a) to 2(d), the present plaintiffs No.6 and 7 are defendant No.3(a) and 3(b), the present defendant No.2 is defendant No.4, the defendants No.3 to 7 are a defendant No.5(b) to 5(g), the present defendant No.8 is defendant No.6, the present defendant No.9 is defendant No.7(a), the present defendants No.11 and 12 are defendant No.8(a) and 8(b) and the present defendant No.10 is plaintiff in the said O.S.No.298/2023. However, the present plaintiffs without disclosing the pendency of O.S.No.298/2019, have filed this suit for the same relief of partition and as such, this suit is not maintainable in law and the same is required to be stayed. Therefore, for all these reasons, the defendant No.10 has prayed to allow his application.

3. The plaintiffs have filed their objections to the application thereby denying the averments of the application and contending that they and defendants No.1 and 2 have half share in the suit properties which are their ancestral properties and in which, there is no division till this day. The plaintiffs have not filed any suit seeking partition except this suit. The suit properties are

landed properties which are in joint possession and enjoyment of the plaintiffs and defendants.

4. The plaintiffs have further contended that the application filed by the defendant No.10 is not maintainable as the reliefs sought by them in this suit are different from the reliefs sought by the defendants in the previous suit and moreover, the present suit is filed on different cause of action but in spite of the same, the defendant No.10 has filed this false application to drag the proceedings of this case. Moreover, the plaintiff No.1 has been examined as P.W.1 and the stage is for cross of P.W.1 but without cross examined P.W.1, the defendant No.10 has filed this false application with intent to harass the plaintiffs. Therefore, on these grounds, the plaintiffs have prayed to dismiss the application of the defendant No.10.

5. I have heard arguments of the counsel for the plaintiffs and defendant No.10 and perused record of the case.

6. The points that arise for consideration are:

1. Whether defendant No.10 has made out grounds to allow the application?

2. What order?

7. My findings to the above points are as under:

POINT NO.1: In the **AFFIRMATIVE**

POINT NO.2: As per final order
for the following;

REASONS

8. POINT NO.1:- I have gone through record of the case and the same discloses that the present suit is filed by the plaintiffs for partition and separate possession of their share in item No.1 to 4 of the suit properties. The defendant No.10 has filed a copy of plaint in O.S.No.298/2023 pending on the file of the Court of Addl. Civil Judge, Bangarpet which reveals that the same is filed by him for partition and separate possession of his share in two items of the properties mentioned therein. The said documents further reveals that item No.3 and 4 properties of the present suit are involved in O.S.No.298/2023 and also the present plaintiffs and defendants are parties to the said suit. Thus, it is clear that a suit is already instituted by the defendant No.10 in respect of the present suit properties and against the parties who are involved in the suit. Such being the case, the present suit being a subsequent suit, it is required to be stayed till disposal of the previous suit in order to avoid passing of conflicting decision. It is true that item No.1 and 2 properties of the present suit are not involved in O.S.No.298/2019 but the present plaintiffs can very well make a counter claim to seek share in the said properties as well as the other suit properties in the said suit. Therefore, for all these reasons, I am of the considered opinion that the defendant No.10 has made out grounds for allowing the application. Accordingly, I answer point No.1 in the **AFFIRMATIVE**.

9. POINT NO.2:- For foregoing reasons, I proceed to pass the following:

ORDER

I.A.No.III filed by defendant No.10 under Section 10 of C.P.C. is hereby allowed.

Further proceedings of the suit are hereby stayed till disposal of O.S.No.298/2019 pending before

the Court of Addl. Civil Judge,
Bangarpet.

No order as to cost.

Call on

Sd/-
Addl. Sr. Civil Judge and JMFC,
K.G.F. Itinerary at Bangarpet