

ORDERS ON IA NO-VIII

The plaintiffs have filed this application U/s 151 of CPC seeking to club this suit with OS.No.192/2014 pending on the file of this court to decide the same by way of common evidence.

2. In support of it, the plaintiff No-2 has sworn to his affidavit stating that this suit claiming the relief of declaration and mandatory injunction with regard to their plot No.134 bearing MPI.No.1-11-38/134, situated at Sri. Basaveshwara Co-operative Society Ltd., layout Lingasugur road, Raichur. The suit in OS.No.192/2014 filed by Smt. Sridevi Biradar against the present defendant is with regard to her plot bearing No.135 which is situated on the southern side of the suit plot. The nature of the suit filed by the Sridevi and the present plaintiffs is one and the same, therefore, it is necessary to club the suit with OS.No.192/2014 in the ends of justice.

3. To oppose the application the defendant has filed objection contending that the application is not maintainable either in law or on facts. The evidence of the plaintiff has already been completed and at this stage when the case was posted for evidence of defendant the application for clubbing is not maintainable, hence he prayed to reject the application.

4. Heard both sides, perused the material available on record.

5. Now, the points that would arise for determination of this court are as follows:

1) Whether the application filed by the plaintiffs deserves to be allowed?

2) What order?

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

Point No-1: In the negative

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

REASONS

7. Point No-1: Advocate for the plaintiffs contended that one Smt. Sridevi Biradar has filed a suit in OS.No.192/2014 against the same defendant for the same relief, with regard to her plot which is situated southern side of the suit plot. Therefore, it is necessary to club this suit with OS.No.192/2014 and permit them to lead common further evidence in the ends of justice.

8. Per contra, advocate for defendant contended that no explanation forthcoming from the plaintiffs to allow the present application. Moreover, the plaintiffs' side evidence has been completed in OS.No.192/2014, therefore, the present application filed at highly belated stage. Therefore, he prayed to reject the application.

9. Having heard both sides and on perusal of the records admittedly OS.No.192/14 is also pending on the file of this court wherein counsel for both the parties are same. Though plaintiffs in both the cases are different but the defendant is one and the same and the nature of the suit may be one and the same. When that being the case, either of the party has to file application for clubbing of the case prior to commencing of the evidence immediately after

framing of issues, but that has not been done. When the plaintiffs' evidence in OS.No.192/14 has been completed and case was posted for defendant evidence, since 27-11-2017 but the present application came to be filed on 14-12-2017 that too after completion of cross-examination of PW-1. Therefore, certainly it appears that the present application has been filed at highly belated stage. At this juncture, the present application is not tenable. If it allowed, the purpose of consolidation of the cases will not be served. Therefore, I felt that only in order to drag the matter the present application has been filed and in order to submit their arguments both the counsel have taken much time which is not appreciable. Therefore, it is made it clear here itself that looking to the age of the suit, both parties are directed to co-operate with the court in disposing both the matters early. Hence I answered point No-1 in the negative.

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

ORDER

I.A.No-VIII filed by the plaintiffs U/s 151 of CPC is hereby rejected.

Addl. Sr. C.J. Raichur.