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**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
J.M.F.C., AT:MAGADI.**

Present:

Sri.Hanumanth Satwik., B.A, LL.M,
Addl. Senior Civil Judge & JMFC., Magadi.

DATED : THIS THE 16th DAY OF JULY 2022

O.S.No. 976/2014

Plaintiff : Ugraiah S/o late Hanumanarasiah,
Aged about 54 years,
R/at Devamachohalli Village,
Tavarekere Hobli – 562 130,
Bengaluru South Taluk,
Bengaluru District.

(By Sri. **N.S.S.**, Advocate)

--V/s--

Defendants : 1. Sri. Lakshminarasimhaiah,
S/o late Allappa,
Aged about 55 years.

2. Sri. Hanumanthaiah @
Hanumantharaya,
S/o late Allappa,
Aged about 46 years.

3. Sri.Kadrappa,
S/o Kuruda Narasimhaiah,
Aged about 48 years.
4. Sri. Ashwathanarayanappa,
S/o late Alagondappa,
Aged about 68 years.
5. Smt. Lakshamma W/o late Allappa,
Aged about 75 years,
6. Sri. Lakshminarasimhaiah,
S/o. Late. Maranna,
Aged about 79 years,
7. Sri. Ugraiah,
S/o. Late. Maranna,
Aged about 70 years,
8. Sri. Hanumantharayappa,
S/o. Late. Veeranasimhaiah,
Aged about 42 years,
9. Smt. Radha,
D/o. Late. Veera Narasaiah,
Aged about 42 years,
10. Smt. Narasamma,
D/o. Late. Veera Narasaiah,
Aged about 42 years,
11. Smt. Ganganarasamma,
D/o. Late. Narasaiah,
@ Kuruda Narasimhaiah,
W/o. Late. Rangaswamaiah,
Aged about 58 years,

D1 to 11 are R/at:

Devamachohalli Village,
Tavarekere Hobli,
Bengaluru South Taluk,
Bengaluru District.

12. Smt. Narasamma,
D/o. Late. Narasimhaiah,
@ Kuruda Narasimhaiah,
W/o. Doddanarasimhaiah,
Aged about 56 years,
R/at: Ankainapalya Village,
Madapatna Post,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South Taluk.

(Defendants no.1, 2, 5 by Sri. **R.S.** Advocate)
(Defendants no.3, 4 by Sri. **G.P.** Advocate)
(Defendants no.6 to 10 by Sri. **B.V.L.** Advocate)
(Defendants no.11 & 12 by Sri. **P.K.R.** Advocate)

ORDER ON IA NO. VIII

The present suit is for declaration and permanent injunction.

2. Defendant no.6 to 10 filed the present application praying to stay the present suit. It is the case of defendant No.6 to 10 that they filed suit bearing O.S.No.177/2020 before Hon'ble Court of Principle Civil Judge and JMFC, Magadi. The said suit is with respect to the same suit schedule properties. The parties and the properties of the the present suit and suit bearing O.S.

No.177/2020 are one and the same. The plaintiff cannot seek declaration without there being partition of the properties. In this regard defendant No.6 to 10 pray as above.

3. The PA holder of Plaintiff in his objections contended that the defendants have stated inconsistent averments in the application. He does not know about suit bearing O.S.No.177/2020 and issuance of summons. Sec.10 of CPC is not attracted to the facts of the case. In this regard, PA holder of plaintiff prays to reject the application.

4. Heard arguments of the counsel.

5. Considering the contention of both the parties following points arise for my consideration as under.

1. Whether defendant no.6 to 10 have made out a case to stay further proceedings in the present suit?
2. What order?

6. My finding for the above points are as follows;

Point No.1 : In the negative
Point No.2 : As per final order
for the following;

REASONS

7. **Point No.1** : - It is the case of defendant No.6 to 10 that they filed suit bearing OS No.177/2020 before Hon'ble Court of Principle Civil Judge and JMFC, Magadi. The said suit is with respect to the same suit schedule properties. The parties and the properties of the the present suit and suit bearing O.S. No.177/2020 are one and the same. The plaintiff cannot seek declaration without there being partition of the properties.

8. In this regard, I have perused the application. Be it stated, in view of the application averments it is clear that the present suit is is filed prior to the alleged suit bearing O.S.No.177/2020. This being the case, I am of the view that the present suit being filed prior to the suit bearing O.S.No.177/2020 cannot be stayed.

9. Further, in the present case, defendant no.6 to 10 did not produce the pleadings of O.S.No.177/2020. As such, there are no materials before this Court to ascertain, whether the issues involved in the present suit are directly and substantially in issue in O.S.No.177/2020.

10. Thus, in the case at hand, the present suit having been instituted before suit bearing O.S.No.177/2020, the present suit cannot be stayed. Further, there are no materials on record to ascertain whether the issues to be determined in the present suit are directly and substantially in issue in O.S.No.177/2020. In these circumstances, considering the application, objections and materials on record, I am of the view that defendant no.6 to 10 failed to make out a case to stay further proceedings in the present suit as sought for. Accordingly, point no.1 is answered in the negative.

11. **Point No.2** : - In view of reasons on point No.1, I proceed to pass the following,

ORDER

**IA No.VIII filed by defendant no.6 to 10 is
hereby rejected on cost of Rs.100/-.**

(Dictated to the Typist, directly on the computer typed by him corrected by me and then pronounced in the open court on this the **16th day of July, 2022.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**