

ORDER ON I.A.No.II

The respondent No.1 has filed I.A.No.II under Sec.10 r/w Sec.151 of CPC., seeking to stay the further proceedings in this case till the disposal of the case filed in P & SC.No.4/2021 on the file of Addl. Senior Civil Judge at Madhugiri.

2. The respondent No.1 has sworn to an affidavit in support of this I.A. and contended that, she along with her children have filed the petition seeking issuance of succession certificate in respect of death cum retirement benefits of her husband H.L. Naragaraju in P&SC.No.4/2021 and in the said case present petitioners and other respondents have put their appearance through their respective counsels and the present petitioners have also filed objection to the main petition and they have also filed application under Order 7 Rule 11 of CPC and after contest the said application came to be rejected and now the case is pending for evidence. The petitioner being the party therein with a dishonest intention to waste precious time of the court and being aware of the basic facts that she could work out her remedy in the said case itself, just to harass the respondents she has filed this petition seeking similar prayer with similar facts pleaded in the objection. Therefore, there cannot be two cases for one cause and one dispute. As such the above case is recent and latest case, during the pendency of the earlier case in

P&SC.No.4/2021 the above case is not maintainable in law. Hence, two proceedings in respect of common cause cannot be adjudicated in different courts in dual manner which certainly effects the legitimate rights through two conflicting judgments. Hence, in order to avoid anomalous situation it is just and proper to stay all the further proceedings in this case till the disposal of the case pending in P&SC.No.4/2021.

3. The petitioner has filed objections to this I.A. and contended that above said application is not maintainable either in law or on facts. The respondent has suppressed the material facts and filed this I.A. only to harass the petitioner and to drag on the matter the said application is filed. The contents of affidavit supporting the application has no paragraph numbers, vocabulary, punctuality, full stop and no proper meaning in the sentence. Though the petitioner has denied all the contents of affidavit and entire affidavit averments are baseless. Sec.10 of CPC., clearly envisaged that said procedure is applicable to only civil suits and not to summary proceedings. In this case matter is posted for objection to the main petition. At this stage the respondent without filing their objection, they have filed this I.A. under Sec.10 of C.P.C. seeking stay of these proceedings until the disposal of another petition pending before Addl. Senior Civil Judge at

Madhugiri. The above matter is not posted for adjudication, before that the applicant has filed application in wrong direction. In two parallel suits there is no bar of passing interlocutory orders which the court follows except the procedure of trial. Sec.10 of CPC., does not bar any action. The scope of civil suits and the proceedings under Indian Succession Act is different and similarly question involved in this case are not same and therefore there is no grounds for staying this proceedings. Moreover the part-X of Indian Succession Act upon any question of rights between the parties shall not bar the trial of the same question in any suit. Similarly suits is not in civil nature summary suits comes under Order 37 of CPC. Sec.10 of CPC., is applicable only to the civil suits. Hence, prays to dismiss the application with cost in the interest of justice and equity.

4. Heard and perused the materials placed before me.

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

1. Whether respondent No.1 has made out sufficient grounds to stay further proceedings in the above case till the disposal of the case in P & SC.4/2021, on the file of Addl. Senior Civil Judge, at Madhugiri?
2. What order?

6. My findings to 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:** The petitioners have filed this petition under Sec.372 of Indian Succession Act seeking issuance of succession certificate to claim terminal benefits of deceased government servant by name R.L. Nagaraju i.e., family pension, D.C.R.G., G.P.F, K.G.I.D, Compensatory job in favour of petitioner No.2 and 3 and other pensionary or terminal benefits as per law. It is the specific case of the petitioners that petitioner No.1 is the legally wedded wife and petitioner No.2 and 3 are the legitimate children of deceased R.L. Nagaraju. In pursuance of summons respondents No.1 to 3 have appeared through their counsel and filed this I.A. No.II under Sec.10 r/w Sec.151 of CPC., to stay further proceedings till the disposal of P&SC.4/2021. It is the specific case of the respondents that said P&SC.4/2021 is also pending before Addl. Senior Civil Judge & JMFC., Madhugiri and since the parties, reliefs sought by them and dispute is one and the same in order to avoid conflicting orders passed by different courts prays to stay this subsequent petition.

8. Heard, on both side and perused the records., on its perusal it goes to show that present petitioners have filed the suit in O.S.228/2006 against the deceased seeking maintenance wherein deceased has appeared through his counsel and filed written statement by contending that the plaintiffs have already filed C.Mis.P.68/1995 and the same is allowed by awarding Rs.300/- to the 1st plaintiff and Rs.150/- to the 2nd and 3rd plaintiff. The G.-Tree and invitation produced by the petitioners prima facie goes to show that they are the legally wedded wife and children of the deceased. In the nomination form pertaining to deceased service records he has mentioned the name of petitioner No.1. Petitioners have also furnished the Marriage Invitation and school certificate to prove their contentions and various applications given to the department of the deceased seeking death benefits and compensatory job. On the other hand respondents have not placed any material on record even they have not furnished the copy of the petition pertaining to P&SC.4/2021. Since petitioners are claiming that they are the 1st wife and children and the name of petitioner No.1 is mentioned in the service records, I feel it just and proper to adjudicate their dispute at first without staying the proceedings. Respondents have not produced any documents and petition of P&SC.4/2021 to show that what are the properties mentioned and reliefs sought in the said petition.

Hence, in the absence of production of petition pertaining to P&SC.4/2021 and also considering that petitioners are claiming to be first wife and children of deceased without causing any much delay I, feel it just and proper to proceed with this case and passed suitable orders. Respondent No.1 to 3 have also not yet filed objection to the main petition. Respondents have not urged valid grounds to stay her proceedings. Hence, I answer Point No.1 in the **Negative.**

9. **POINT No.2:** For the aforesaid reasons, I pass the following;

: ORDER :

I.A.No.II filed by the respondent No.1 under Sec.10 r/w Sec.151 of CPC., is hereby dismissed.

No order as to cost.

For objection to the main petition by respondent No.1 to 3 finally.-06.12.2023.

**Sd/-
Prl. Senior Civil Judge & JMFC.,
Madhugiri.**