

KAUK620042852022



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS, AT: HONNAVAR**
Present: Sri. Chandrashekhar Banakar., B.A., LL.B., LL.M.,
Prl. Civil Judge & J.M.F.C.,
Honnavar
Dated this the 7th day of July, 2023
O.S. No. 121/2022

Plaintiffs:

01. Managala W/o Bhaskar Shet,

Age: 54 years, Occ: Household,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,
R/b. Trusti President,

02. U.F.M Arun Shankar Shet,

Age: 48 years, Occ: Agriculture,
R/o. Arolli, Mundgod, Tq: Honnavar, (U.K).,

//Vs//

Defendants:

01. Ammakka W/o Masti Gouda,

Age: 60 years, Occ: Household,
R/o. Arolli, Mundgod, Tq: Honnavar, (U.K).,

02. Ramu Masti Gouda,

Age: 38 years, Occ: Agriculture,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,

03. Venkatesh Masti Gouda,

Age: 35 years, Occ: Agriculture,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,

Parties to I.A. No. IV:

Applicants/plaintiffs:

01. Managala W/o Bhaskar Shet,

Age: 54 years, Occ: Household,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,

02. U.F.M Arun Shankar Shet,

Age: 48 years, Occ: Agriculture,
R/o. Arolli, Mundgod, Tq: Honnavar, (U.K).,

(**By** Advocate Sri.VRN)

//Vs//

Opponents/defendants:

01. Ammakka W/o Masti Gouda,

Age: 60 years, Occ: Household,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,

02. Ramu Masti Gouda,

Age: 38 years, Occ: Agriculture,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,

03. Venkatesh Masti Gouda,

Age: 35 years, Occ: Agriculture,
R/o. Arolli, Mundgod, Tq: Honnavar,(U.K).,

(**By** Advocate Sri. SSB)_

ORDER ON I.A. NO. IV

The defendants have filed this application seeking for the stay of this suit under section 10 of CPC. The present

application is filed when the case was posted for hearing on I.A.No. III.

02. The application of the defendants is supported with the memorandum of facts, wherein the learned advocate for the defendants has stated that the plaintiff No.1 had filed the writ petition No. 105517/2022 before the Hon'ble High Court of Karnataka in connection with the item No. 2 of the suit schedule property. The subject-matter of this suit and subject-matter of the said writ petition are one and the same. Therefore, he prayed this Court to stay this suit till the disposal of the said writ petition by the Hon'ble High Court of Karnataka.

03. On the other hand, the plaintiffs have filed their objections to the present application. In their objections, the plaintiffs have contended that the present application is not maintainable. Further they have contended that this suit is filed for the relief of permanent injunction and this suit has no connection with the said writ petition. The said writ petition was filed against the illegal order of the revenue officials and in the said writ petition, no prayer was sought against the defendants of this suit. Therefore, they prayed to dismiss the application with cost.

04. I have heard the arguments of learned Advocate for defendants and learned Advocate for plaintiffs and perused the application.

05. The point which arose for my consideration is **"Whether the applicants/defendants made out grounds to allow the application?"**

06. By considering the materials on record, my answers to the above point is in **negative** for the following reasons.

REASONS

07. Points No.1: The suit of the plaintiffs is for the relief of bare injunction against the defendants. The defendants have filed this application under section 10 of CPC.

08. Before going into the merits of the application, it is proper to read the provision of section 10 of CPC. It reads as follows,

"Section 10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

09. In Aspi Jal And Anr vs Khushroo Rustom Dadyburjor, reported in (2013)4 SCC 333, the Hon'ble Supreme Court of India has held as follows,

"The key words in Section 10 CPC are "the matter in issue is directly and substantially in issue in a previously instituted suit." The test for applicability of Section 10 is whether on a final decision being reached in previously instituted suit, such decision would operate as res judicata in the subsequent suit. when the matter in controversy is the same, it may be immaterial what further relief is claimed in the subsequent suit."

10. On perusal of the above provision of law and above cited judgment, it is clear that to entitle for the relief sought in

the present application, the applicants must prove that the matter in issue in the present suit is also directly and substantially in issue in a previously instituted suit and that suit must be in between the same parties.

11. On careful perusal of the plaint and records pertaining to the writ petition No. 105517/2022, it appears that the dispute in both the litigation are relating to the property which is shown as item No.2 of the suit schedule property. Further, the under section 10 of CPC, the Court can stay the subsequent suit. The present suit is filed on 24/11/2022 and the said writ petition was filed on 28/11/2022. According to the said dates, this suit is the earlier litigation and the writ petition is the subsequent litigation. Further by filing the said writ petition, the petitioners have sought for writ of certiorari against the respondent Nos. 2 and 3 of the said writ petition and in the said writ petition, no relief is sought against the defendants of this suit.

12. In Aspi Jal vs Khushroo Rustom Dadyburjor, reported in (2013)4 SCC 333, the Hon'ble Supreme Court of India has held as follows,

"12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what "the matter in issue" exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in

controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case."

13. So on perusal of the above cited judgment, it reveals that for application of section 10 of the CPC, the entire subject-matter of the two suits must be the same. Section 10 of CPC will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. But, the subject-matter, nature and reliefs of this suit and writ petition are not similar and they are different. Moreover, the present suit is earlier litigation and the writ petition is subsequent litigation. Under section 10 of CPC, the Court can stay the subsequent suit. But this Court has no jurisdiction and power to stay the writ petition. Moreover, under section 10, Court can stay only suits, but in this case the subsequent litigation is writ petition and not a suit. Therefore, section 10 of CPC would not apply in this case. Therefore I answered point No. 1 in **negative**. Hence, I proceed to pass the following:

ORDER

**I.A. No. IV filed by the
defendants under section 10 of CPC is
hereby dismissed.**

(Typed by me in Laptop, corrected and signed by me and then
pronounced in the open Court on this 7th day of July, 2023).

**Prl. Civil Judge & J.M.F.C.,
Honnavar**