

ORDERS ON I.A.NO.XI

This I.A is filed by the plaintiff to stay the proceedings of this suit till the disposal of the suit filed by the first defendant before the II Addl. Civil Judge and JMFC, Kundapur in O.S 195/2013. The counsel for the defendants filed his objection in detail.

Heard both the advocates.

Admittedly the provision available under civil procedure code for stay of the suit is section 10 of CPC. But the present application is filed by the plaintiff under section 151 of CPC. A plain reading of Section 10 of CPC reveals that there must be previous suit between the parties to the suit with regard to the same title or subject matter. In such a case the trial of the subsequent suit can alone be stayed by the court. Admittedly there is no previous suit pending between the plaintiff and the defendants with regard to the subject matter of the suit. There is no dispute with regard to filing of another suit by the first defendant as referred above. There is also no dispute that the said suit is filed for the relief of declaration of roadway. But the present suit is for bare permanent injunction only. This suit is filed by the plaintiff with a definite pleading that he is in possession and enjoyment of the suit property and the defendants are trying to form a roadway. As could be seen from the objection filed by the defendants herein it goes to show that the defendant no.2 and 3 are not the parties to the said suit and the said suit is with regard to some old road. As stated above the definite case of the plaintiff is that he is in exclusive possession

of the suit property and the defendants are trying to form a new roadway. The same is to be proved by the plaintiff in the preset suit. Moreover this is not a subsequent suit. As such the application has no merits. As such I proceed to pass the following:

ORDER

I.A No.XI filed by the plaintiff under section 151 of CPC is rejected. Posted for P/ E by 14-11-2016.

(PREETH.J.)
Prl. Civil Judge & JMFC.,
Kundapur.