

**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT HAGARIBOMMANAHALLI.**

Dated: this the 12th day of April 2023

PRESENT: SMT. ANUPAMA D., B.COM., LL.B.

Senior Civil Judge & J.M.F.C.,
Hagaribommanahalli.

OS. NO.68/2021

Petitioner/s: Mahadev Patel

V/s

Respondent/s: Devaramani Bhagya @ Basamma

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**ORDER ON IA NO. VI FILED BY THE DEFENDANT
NO. 2 U/Sec 10 OF C.P.C.**

Now the present case is set down for hearing on
I.A.No.I filed U/Order 39 rule 1 and 2 of CPC.

02. At this juncture the defendant no.2 has filed this application by praying this court to stay the present suit.

03. It is stated in the affidavit filed in the support of the application that, the applicant/defendant No.2 Mahadeva Patel is defendant no.2 of this court. The plaintiff has filed this suit seeking the relief of partition and separate possession against him and other

defendants. One Mahadevamma has filed a suit in OS.no.22/2017 before this court for the very same relief. In the said suit the plaintiff of this suit namely Devaramani Bhagya @ Basamma was defendant no.8 and the applicant/defendant No.2 was the defendant no.5. This plaintiff had adopted the written statement filed by the applicant/defendant No.2 in the said suit. The property shown in OS.no.22/2017 and the present are one and the same and the nature of relief is also one and the same. The plaintiff of the said suit in O.S.No.22/2017 namely Mahadevamma died during the pendency of the case and her husband namely Rachanna was brought on record as her legal heir. Thereafter, the applicant/defendant No.2 has filed an application U/Order 7 rule 11 CPC before this court, after hearing both parties this court has rejected the plaint by allowing the application filed by the applicant/defendant No.2. Now the husband of Mahadevamma namely Rachanna has filed RFA No.100211/2022 before the Honble High Court of Karnataka by challenging the order of this court passed in OS.No.22/2017. Recently the applicant/defendant No.2 has received notice from the Hon'ble High Court of Karnataka in the said RFA. Since the said RFA is registered before the Honble High Court of Karnataka and notice has been issued to applicant/defendant No.2, it is made clear that the appeal is still pending for consideration and it is deemed that earlier suit which

was adjudicate by this court has not concluded and still pending for consideration before the Hon'ble High Court of Karnataka. In the said appeal the Hon'ble High Court of Karnataka has not passed the order. Hence, the present i.e., subsequent suit filed has to be stayed by this court and till conclusion of RFA No.100211/2022. On the above grounds he prays to stay the present suit till passing orders by the Hon'ble High Court of Karnataka in RFA No.100211/2022.

04. Per contra, the plaintiff has filed objection by denying all the averments of affidavit and further contended that the plaintiff has admitted the suit in O.S.No.22/2017 and she was defendant no.8 in that case. It is her contention that she was placed exparte in that suit. It is also her further contention that the present applicant/defendant No.2 Mahadeva Patel has approached the plaintiff of the suit in her house and convinced to her that there is a dispute between the 1st and 2nd wives of Shambhunatha Patil and they have settled the dispute with regard to shares of his mother and sons and daughters of Sangamma. The plaintiff of this suit has believed the words of her brother Mahadeva Patil and she entrusted her brother to look after the proceedings in O.S.No.22/2017. The applicant/defendant No.2 has assured the plaintiff that after conclusion of the case or if the case would take number of years to dispose off, he will pay some amount

of land or site properties in favour of the plaintiff. By believing his words the plaintiff has put her signature to the vakalath in O.S.No.22/2017. She has not filed written statement in the said suit. but, the applicant/defendant No.2 has without consent and knowledge of the plaintiff has filed an adoption memo by contending that he has drafted written statement filed by him in that suit. The proceedings of the suit i.e., evidence of parties was not in the knowledge of the plaintiff. The applicant/defendant No.2 has cheated the plaintiff by this way and played fraud on the plaintiff. Now he has come up with this application by holding that the plaintiff had adopted the written statement filed by him in O.S.No.22/2017. She further admitted RFA proceedings before the Hon'ble High Court of Karnataka, Dharwad bench and it is her further contention that the said RFA was filed before the Hon'ble High Court of Karnataka with an intention to grab her share in the suit schedule properties. On the above grounds she prays to dismiss the application filed by the applicant/defendant No.2.

05. In support of the application the defendant no.2 has produced certified copies of pleadings in O.S.No.22/2017, adoption memo filed by defendant no.2, 6 and 8 in the said case, certified copies of order of the said case, copy of Form No.18 in RFA No.100211/2022, copy of synopsis and petition.

06. Ld. Counsel for plaintiff has file written arguments on this application.

07. The Ld. Counsel for defendant has also referred a decision of Hon'ble High Court of Himachal Pradesh, which is held between Bhau Ram Vs Kamla Devi and Others on 6th November, 2019.

08. I have carefully gone through the case papers and certified copies furnished by the defendant no.2 and also the schedule of the present case on the suit in O.S.No.22/2017.

09. After having heard both sides, the points that would arise for my consideration are;

- 1) Whether the defendant no.2 has satisfactorily proved that present suit is a subsequent suit filed by the plaintiff for the very same relief as that of O.S. 22/2017, hence it is to be stayed?
- 2) What order?

REASONS

10. **POINT NO. 1:** On perusal of case papers it is come to know that one Mahadevamma @ Mahadevi has filed a suit O.S.No.22/2017 before this court against 15 persons as defendants for the relief of partition and separate possession. In the said suit nearly about 26 properties have been shown which are the landed property under 'A' schedule and one house property has

been shown under 'B' schedule. In the said suit the applicant Mahadeva patil/defendant no. 2 of this suit was shown as defendant no.5 and the plaintiff of this suit was shown as defendant no.8. In the said suit the applicant/defendant no.2 Mahadeva Patil has filed written statement, defendant no.2, 6 and 8 have adopted the same. On this behalf the memo has been filed by the Ld. counsel for defendant no.2, 6 and 8 before the Court.

11. It is true that the defendant no.5 of the said suit i.e., applicant/ defendant no.2 of present suit has filed application i.e., I.A.No.21 U/Order 7 rule 11(a) and (d) R/w 151 of CPC on 13.07.2021. It is also true that RFA no. 100211/2022 has been filed before the Hon'ble High Court of Karnataka against the order passed by this court on the said I.A.No. 21 on 24.08.2021. The said RFA is still pending for consideration. As the matters stand thus, the defendant no.8 of O.S.No. 22/2017 Devaramani Bhagya @ Basamma has filed the present suit against the defendants no.1 to 6 i.e., Sangamma, Mahadeva Patel, Gouramma, Gangamma, Rajeshwari Patel and Guruprasad. These defendant no.1 to 4 were the defendants no.1, 5, 6, 7 respectively in the earlier suit in O.S. 22/2017. The defendant no.5 and 6 of this court were not the parties of the said suit.

12. In the present case on hand the plaintiff has shown seven landed properties under 'B' schedule and 4 house properties also, these properties shown under 'B' schedule i.e., Sy.No. 337/B, 337/C, 338/A, 339/B, 509, 511/B, 504/A, 378/E, 339/A, 338/C have been shown as property numbers 4, 5, 7, 15, 16, 18 to 22 under 'A' schedule in O.S.No.22/2017 rest of the properties shown under 'A' schedule have not been shown in the present case on hand as schedule properties. In O.S.No.22/2017 only one house property bearing house No.312 measuring 40X38 feet has been shown under 'B' schedule. However said property has not been shown in the present case on hand as house property. Since, a suit with regard to some of the properties mentioned under the schedule of the present case on hand is still pending for consideration; another suit for the same nature against the same parties with regard to the same properties is not maintainable. If both the suits will be taken up by different courts for consideration, there will be chances of outcome of different decisions by both courts, which will leads to confusion in future. The plaintiff of the present case on hand has admitted the earlier suit in O.S.No. 22/2017, but it is her contention that she has been arrayed as defendant no.8 of the said case and her brother i.e., applicant/ defendant no.2 of the present case had instigated her to put her signature to the vakalath and without knowledge and consent; he has filed an adoption memo in the said case. If that is

the case, she can challenge the said adoption memo in the same suit which is pending before the Hon'ble High Court of Karnataka, since the said case is still pending before the the Hon'ble High Court of Karnataka in RFA No.100211/2022 for consideration. It is true that the suit in O.S.No. 22/2017 has not yet been concluded either by this court or by the Hon'ble High Court of Karnataka. These both suits are for the same reliefs i.e., partition and separate possession. In this regard the Ld. counsel for defendant no.2 has referred a decision mentioned above in which the Hon'ble High Court of Himachal Pradesh has held at paragraph No. 13 that;

The language of Section 10 of CPC, as has been reproduced hereinabove, is imperative. It provides that when the matter in both the suits, which are between the same parties, litigating under the same title is directly and substantially the same, then the court shall not proceed with the "trial" of subsequent instituted suit. It further provides that when it is brought to the notice of the "trial Court" that there is a previously instituted suit between the same parties and the matter is directly and substantially the same, provision contained under section 10 of CPC being imperative makes it mandatory for the court to stop further proceedings in the subsequently instituted suit. Bare perusal of provision contained in the aforesaid provision of law provides that application is maintainable only before the court where the subsequent suit is "pending". Application, as referred above, can only be filed during the pendency of the suit and definitely not after the trail comes to an end.

13. In view of the above decision of the Hon'ble High court of Himachal Pradesh and in view of section 10 of CPC the subsequent suit filed by and between same parties with regard to same properties and for the same relief has to be stayed by the court which is trying the subsequent suit. Hence, until conclusion of the RFA no. 100211/2022, this suit has to be stayed. Hence, I answered point No. 1 in affirmative.

14. **POINT NO. 2:** for the aforementioned reasons I proceed to pass the following.

:-ORDER:-

IA No.VI filed by the applicant/defendant No.2 U/s 10 of CPC is hereby allowed.

Consequently the present suit is stayed till disposal of RFA No.100211/2022 Office is directed to put up this file after receipt of certified copy of order in RFA No. 100211/2022.

Office is directed to put up this file office receipt of certified copy of order in RFA No.100211/2022 for passing further orders in this case.

For the purpose of tallying date in CIS, a date has been provided.

There is no need to call out the case in open court till receipt of order as stated above.

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in the open court this the 12th day of April 2023).

Sd/-

(Anupama.D)
Sr. C.J. and JMFC,
Hagaribommanahalli.