

:-ORDERS ON I.A.NO.VI FILED BY DEFENDANT

NO.1, 2 AND 5 U/Sec.151 OF CPC :-

1. The present suit is filed by plaintiff against defendants for the relief of partition and separate possession and now when case is posted for further plaintiff evidence, present application is filed by defendant No.1, 2 and 5 to club the suit along with O.S.No.61/2021.

2. In the affidavit annexed to application, defendant No.1 averred that, he has filed another suit in O.S.No.61/2021 on the file of this court for partition and separate possession and suit properties are one and the same. In order to avoid conflict of decision, it is necessary to club both the cases and amongst these grounds, prayed to allow the application.

3. Defendant No.3, 4, 6 to 9 filed objections to the application contending that, earlier plaintiff had filed suit in O.S.No.380/2012, wherein defendant

No.1, 2 and 5 of this suit had filed counter claim. Thereafter, plaintiff filed memo to not press the suit and filed the suit, but defendant No.2 has filed O.S.No.61/2021 seeking relief on the same property and consisting of same parties, hence, there is no necessity to club both the suits and it is very much necessary to stay further proceedings of O.S.No.61/2021 and prayed to reject the application.

4. Heard. Perused the records.

5. The points that arise for my consideration is as under:

1) Whether defendant No.1, 2 and 5 have made out sufficient grounds to allow the application?

2) What order?

6. My findings to the above points are as under:

Point No.1 : In the Affirmative.

Point No.2 : As per final order
for the following:

:REASONS:

7. **POINT NO.1** The Hon'ble High Court of Karnataka in decision reported in WP No.24842/2022 dated 24.05.2023 held that "when the parties are same, property involved is same and court in which suits are brought are same, the request for clubbing should not be denied".

8. The ratio laid down in above said decision is aptly applicable to the case in hand because, clubbing of the suit would save time and energy. Hence, in this case parties and properties are one and the same in both the suits. Hence, prayer of defendant No.1, that, O.S.No.61/2021 must be stayed till further proceedings does not hold any water. Sufficient grounds are made out to allow the application. Hence, for the above said reasons I answer **Point No.1 in the Affirmative.**

9. **Point No.2:** For the above reasonings and findings given to Point No.1, I proceed to pass following.

:ORDER:

I.A.NoVI filed by defendant No.1, 2 and 5 U/Sec.151 of CPC is hereby allowed.

This suit is clubbed with O.S.No.61/2021 pending on the file of this court.

Both the parties are hereby directed to lead evidence in O.S.No.80/2018, as it is considered as main suit.

**Addl. Sr. Civil Judge & JMFC,
Sindagi.**