

O.S.No.61/2021

:-ORDERS ON I.A.NO.V FILED BY DEFENDANTS

U/Sec.10 OF CPC :-

1. The present suit is filed by plaintiffs against defendants for the relief of partition and separate possession and now when case is posted for plaintiff evidence, present application is filed by defendants praying this court to stay for the further proceedings of this suit till disposal of suit in O.S.No.80/2018.

2. In the affidavit annexed to application, defendant No.1 averred that, before filing of this suit, defendant No.2 of this suit had filed suit in O.S.No.380/2012, which was dismissed as not pressed and defendant No.2 filed suit in O.S.No.80/2018, wherein properties and parties are the same. Hence, it is very much necessary to stay further proceedings of

this suit till disposal of O.S.No.80/2018 and amongst these grounds, prayed to allow the application.

3. Plaintiffs have filed objections to the application contending that, he has already filed application to club the suit along with O.S.No.80/2018 which is pending on the file of this court. These defendants are also defendants in O.S.No.80/2018 and they have no right to seek stay of suit and prayed to dismiss the application.

4. Heard. Perused the records.

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

1) Whether defendants 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 Negative.

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

:REASONS:

7. **POINT NO.1:** A simple reading of Sec.10 of CPC indicates that, only subsequent suits be stayed and not previously instituted suits as per doctrine of Res-Subjudice.

8. **The Hon'ble Supreme Court of India in decision in (2004) 6 SCC 756** has clearly held that "Matter in later suit found to be directly and substantially in issue in previously instituted suit and therefore later suit stayed".

9. The ratio laid down in above said decision is aptly applicable to the case in hand because, present suit being later suit, defendant No.1 has sought to stay earlier suit, which is not tenable under the law and when previously instituted suit in O.S.No.80/2018 is pending, that suit cannot be stayed.

10. As already this court in O.S.No.80/2018 has ordered to club this case to O.S.No.80/2018, question of entertaining this application does not arise. No sufficient grounds are made out to allow the application. Hence, for the above said reasons I answer **Point No.1 in the Negative.**

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

:ORDER:

I.A.NoV filed by defendants U/Sec.10 of CPC is hereby rejected.

In view of disposal of I.A.No.V, I.A.No.IV filed by plaintiffs u/Sec.151 of CPC is hereby disposed of.

Call the case along with O.S.No.80/2018 by :

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