

ORDER BELOW EXH. 26 IN R.C.S. NO. 284/2021

1] Present application has been placed on behalf of defendants under section 10 of Code of Civil Procedure, 1908 to stay the present suit on the ground that another suit in respect of same property is pending in another court. Plaintiff has strongly resisted the application by filing his say at Exh. 28. Perused the application and say. Heard, Ld. pleaders appearing on behalf of both the parties. So far as applicability of section 10 of Code of Civil Procedure, 1908 is concern, as per said provision, no court shall proceed with the trial of any suit in which the matter in issue is also directly or 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 limit of any court in India established or continued by the central Government having like jurisdiction, or before the supreme court. In other words, court cannot try subsequent suit, if similar issues are involved in previous suit. I must mention here that as discussed in Order XIV of Code of Civil Procedure, 1908, issues arises when material proposition of fact or law is affirmed by one party and denied by the other. It is contended in present application that Regular Civil Suit no. 01/2019 is pending in another court and said suit is in respect of same property as involved in present suit. As issues can be framed or ascertained on the basis of plaint and written statement, copy of plaint and written statement of previous suit is essential to be placed on record so as to ascertain as to whether similar issues are involved in previous suit. Therefore, whenever an application to stay the suit

under section 10 of Code of Civil Procedure 1908 is placed, it is incumbent upon the defendant to submit the copy of plaint and written statement of another or previous pending suit so as to ensure as to whether the similar issues are involved in both the suit. However, the copy of written statement of Regular Civil Suit no. 01/2019 has not been produced on record. Therefore, for want of copy of written statement of R.C.S. 01/2019, it is highly difficult to ascertain as to whether the similar issues are involved in present suit and R.C.S. 01/2019.

2] I must mention here that, plaintiff in present suit has not been impleaded as party to Regular Civil Suit No. 01/2019. Thus, similar parties cannot be said to be involved in both the suits. Therefore, principle of *res-subjudice* would not apply for the present suit. Through present suit, plaintiff has sought the partition by claiming $\frac{1}{2}$ share in the suit property along with challenging the legality of gift deed executed in favour of defendant no. 1 by his mother. As plaintiff in present suit has not been impleaded as party to Regular Civil Suit No. 01/2019, he is unable to agitate the issues in Regular Civil Suit No.01/2019 which are involved in present suit. If the plaintiff was impleaded as party to Regular Civil Suit No.01/2019, it could be more convenient to resolve the questions into controversy between parties to both the suit through single suit. However, after institution of present suit, neither the steps for impleading the present plaintiff as party to Regular Civil Suit No.01/2019 has been taken nor steps for clubbing both the suits have been taken. Thus, the plaintiff is having a choice to agitate issues and claim right in the suit property

through separate suit. If present suit is stayed, for want of being impleaded as party to Regular Civil Suit No.01/2019, present plaintiff would be precluded from agitating the issues involved in the present suit and claiming right in the suit property. Grounds and circumstances requiring the present suit to be stayed under section 10 of Code of Civil Procedure, 1908 do not appears to be in existence. Hence, present application deserves for rejection. In result, I pass following order :-

ORDER

Application at Exh. 26 stands rejected.

Sd/-XXX

Shrigonda

Date :- 14/02/2024

(H. J. Pathan)

3rd Jt. Civil Judge, S.D., Shrigonda.