

**Order below Exh. 24**  
{Passed on 18-02-2022}

1. Heard both the parties. Perusal the application and say filed by defendant. This is an application filed by the defendant under Section 10 of CPC to stay the present suit. The Ld. Counsel of the plaintiff submitted that the defendant no.1,2,6,7,9 to 11 have filed RCS. suit no. 310/2019 against the plaintiff for partition, possession, declaration and injunction. The plaintiff in the present suit have not filed the written statement in RCS no.310.2019. The suit i.e RCS no. 310/2019 is pending before the court. Hence the present suit being subsequent suit needs to be stayed in view of the Section 10 of CPC. Hence, he prayed the said application be allowed.

2. `The Ld. Counsel of the plaintiff submitted that the said application is not tenable and liable to be rejected. The defendant do not have any right to filed the present application. The plaintiff has filed the present suit for injunction for pertaining to Gat No. 245. The defendants have not added the plaintiffs as party in RCS no. 310/2019. Hence, he prayed the said application be rejected.

3. Section 10 of CPC contains the rule of *res sub judice*. Section 10 of CPC provides that a suit may be stayed on fulfillment of the following conditions i.e :

(i) There are two suits one previously instituted and the other subsequently instituted.

(ii) The matter in issue in the subsequent suit is directly and substantially in issue in the previous suit.

(iii) The parties to both the suits are the same.

- (iv) The previously instituted suit must be pending.  
(v) The court in which the previous suit is pending has jurisdiction to grant the relief claimed in the subsequent suit.  
(vi) Both the parties are litigating under the same title in both the suit.

4. On perusal of RCS no. 310/2019, it is seen that the plaintiffs are not parties to the suit. The subject matter of the suit and RCS No. 310/2019 are different. The plaintiffs has filed the suit for injunction whereas the defendant have filed the suit for partition , cancellation of sale deed and injunction. Further, both parties are not litigating under the same title. There is nothing on record to show that continuation of the present suit would cause prejudice to the defendant. The stay of the suit will not cause any injustice to the defendant in the subsequent suit. Hence, there is not need the stay the present suit as the fulfillment of conditions envisaged in Section 10 of CPC are not fulfilled. Hence, the following order is passed.

**ORDER**

- 1] The application is rejected.

Date : 18.02.2022

( N. S. Kakade )  
Addl. Chief Judicial Magistrate,  
Shrigonda.