

ORDER BELOW EXH.36

1. This is an application filed by the defendant under section 10 read with section 151 of the Code of Civil Procedure, 1908 for stay of present suit. (for short C.P.C.)
2. It is the contention of defendant that prior to this suit defendant has filed R.C.S. No. 141/2020 on 06.07.2020 before this court. The subject matter in that suit and this suit is same. Previous suit is filed for Specific Performance of Contract and to restrain the defendant from not to create third party interest. By considering the burden, defence and issues in respect of same subject matter between both the parties and to prevent the court of concurrent jurisdiction to trying two suits simultaneously in respect of same subject matter, this suit is required to stay. Hence, prayed to allow the application.
3. The plaintiff filed her say below Exh.38 and stated that this application is filed only to prolong the matter. The reliefs claimed in both the suits are different. This suit is filed for recovery of possession and R.C.S.No. 141/2020 is filed for Specific Performance of Contract. Therefore, this application is not tenable. Hence, prayed to reject the application.

4. Heard the both sides. They have argued as per the their application and say.

5. I have gone through the record. It appears from the plaint of this suit that this suit is filed possession and injunction restraining defendant not to hand over possession to third party and not to destroy the boundary marks. After perusal of plaint in R.C.S. No. 141/2020, it appears that it is filed for Specific Performance of Contract and injunction restraining the defendant from creating third party interest. Therefore, the issue in R.C.S. No. 141/2020, which is previously instituted suit, is not directly and substantially in issue in this suit. The issues in both the suits are different. The burden to prove the issue on both the parties is different. Therefore, only by considering the fact that subject matter in both the suits is same is no ground to stay this suit. Hence, I pass the following order;

ORDER

1. The application is rejected.
2. No order as to costs.

Date:-17.08.2024.
Place : Gangapur.

(A. B. Ingole)
Jt. Civil Judge (J.D.)
Gangapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same, word to word, as per the original judgment.	
Name of the Stenographer	K.S.Rasve
Court	J.M.F.C. Court No.3, Gangapur.
Date	19.09.2024
Order signed by the presiding officer on	19.09.2024
Order uploaded on	19.09.2024