

ORDER BELOW EXH. 43

(Passed on : 11.12.2019)

01. Present application is filed by the defendants under Section 11 of the C.P.C. and prayed to dismiss the suit.

02. In short, it is the contention of the defendants that predecessor of the plaintiffs had filed one suit bearing R.C.S. No. 191/80 in respect of land in survey No. 68 new Gat No. 54 & 55. Said suit is dismissed. The First Appeal bearing R.C.A. No. 90/98 is also dismissed. One Basir had filed M.A. No. 37/2005 before the Dist. Court which is also rejected. Now the Second Appeal/Writ Petition No. 410/10 is pending. Dispute regarding the ownership and possession has been heard and finally decided by the competent Court, therefore, present suit is hit by Section 11 of C.P.C. Hence, prayed to dismiss the suit.

03. The plaintiffs filed say and opposed the application contending that provisions of Section 11 is not applicable to present suit. Previous suit was for possession and present suit is for declaration of ownership. The reliefs are different, only to prolong the matter present application is filed. Hence, prayed to dismiss the suit.

04. Heard both the parties and perused the documents filed on record. The defendants have filed on record the copy of Judgment in R.C.A. No. 104/82 arised out of judgment and decree in R.C.S. No.

199/1975. The defendants have also filed copy of Judgment in Second Appeal No. 206/91 arised out of judgment and decree passed in R.C.A. No. 104/82. It appears that both these matters are arised out of judgment and decree in R.C.S. No. 199/75 but the present application is filed contending about judgment and decree in R.C.S. 191/80 and R.C.A. No.90/98. The defendants have not filed on record the copies of Judgment and Decree of suit and appeal on which they are relying and filed the present application. Therefore, applicability of Section 11 cannot be decided in absence of those documents.

05. Further, from the pleading in application itself, it appears that, Second Appeal/Writ Petition No. 410/10 is pending. In this situation, it cannot be said that the issue of ownership and possession has been heard and finally decided. The matter is yet pending in Hon'ble High Court, therefore, provisions of Section 11 of the C.P.C. does not attract. Hence, I pass the following order,

ORDER

The application is rejected.

Sd/-

(R. P. Kulkarni)

Civil Judge Senior Division,
Nilanga.

Nilanga.

Dated : 11.12.2019.