

Order below Exh.38 in RCS No.366/2021

Suresh Vs. Aneppa & Ors.

MHLA110019642022

This is an application filed by defendant Nos.1 to 5, 7 and 8 under Section 10 CPC for stay of suit till decision of RCS No.509/2019. The contents of application in short are:- That the plaintiffs have filed this suit for declaration of ownership and perpetual injunction. Before filing this suit the husband of present defendant No.8 had filed RCS No.509/2019 for partition and separate possession and it is pending in the Court of CJSD, Nilanga. The plaintiffs herein are defendant Nos.3 and 4 in the said suit. The suit land which is subject matter of present suit was purchased by plaintiffs and defendants out of their joint income and the present suit land is the subject matter of RCS No.509/2019. An issue whether the present suit land is ancestral property or not is yet to be decided in RCS No.509/2019 and therefore, to avoid conflicting views it is necessary to stay the present suit till decision of RCS No.509/2019. Hence, the application.

2. Plaintiffs have filed their say at **Exh.39** and raised objections. However, plaintiffs have admitted pendency of RCS No. 509/2019 in the Court of CJSD, Nilanga. The contents of their say in short are :- That these plaintiffs have already filed their WS in RCS No.509/2019 and the cause of action and the relief claimed in both the suits are altogether different. The plaintiffs are specifically contending that the suit land, described in para No.2 of the plaint, is their self acquired property and it is not the ancestral properties of plaintiffs and defendants. On these and other grounds plaintiffs have requested to reject the application.

3. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively. Record shows that plaintiffs have filed this suit for declaration of ownership and perpetual injunction in respect of the suit land described in para No.2 of the plaint. Defendant Nos.1 to 5, 7 and 8 have filed their WS at **Exh.28** and contested the claim of plaintiffs. In para No.9 of their WS at **Exh.28**. The defendants have

categorically stated that plaintiffs have not impleaded the legal heirs of deceased Balaji, who has filed RCS No.509/2019, as party to the suit.

4. Record further shows that defendants have filed photocopy of plaint in RCS No.509/2019 which shows that present plaintiffs are defendant Nos.3 and 4. This fact regarding filing of RCS No.509/2019 and they being defendant Nos.3 and 4 in that suit is admitted by plaintiffs in their say itself. After perusing the photocopy of plaint in RCS No.509/2019 it reveals that the subject matter of present suit is also one of the subject matter of the said suit. Although the reliefs claimed and cause of action for filing both the suits are different but parties in both the suits and the subject matter is similar. In my opinion and to avoid conflicting views, it is desirable to stay the present suit till decision of RCS No.509/2019. In case if plaintiffs, who are defendant Nos.3 and 4 in RCS No.509/2019, succeeds in proving the fact that the present suit land is their self acquired property then ultimately the defendants herein, who are plaintiffs in RCS No.509/2019, will not be entitled to get share in the said land. For these reasons, I pass following order:-

ORDER

1. Application is allowed.
2. The trial of the present suit be stayed till decision in RCS No.509/2019 *vide* Section 10 CPC.
3. No order as to costs.

Order dictated and pronounced in open court.

Date :17/06/2023

(Ashish B. Marlecha)
I/c..Jt.Civil Judge(Sr.Dn.),
Nilanga,Dist.Latur.