

Order Below Exh. 51 in R.C.S. No. 112 of 2024

Defendants have filed present application under Section 10 of the Civil Procedure Code to stay of suit. Defendants stated that there is another suit bearing R.C.S. No. 120 of 2023 pending between the parties and the matter in issue is also directly and substantially in issue in that suit. Present suit is filed subsequent to that suit. Therefore, they prayed to stay present suit. On the other hand, plaintiff opposed the application by filing his say below Exh. 58. Plaintiff stated that in present suit, different two self-acquired properties are involved and the matter in issue directly and substantially is not involved in both suits and same parties. Therefore, plaintiff prayed to reject application.

02. Perused application, say and record. Defendants have failed to argue on present application. Thus, in view of order dated 10.10.2025 present application proceeded without argument of defendant. Heard learned advocate for plaintiff. He argued in tune of say and record.

03. Present application is filed under Section 10 of the Civil Procedure Code. Therefore, the rule of *res sub-judice* is applicable in present case. Further, the subject matter of the two suits must be identical. Identity of subject matter and identity of relief are, therefore, the inescapable *sine qua non* for Section 10 to apply. The mere fact that the outcome of one suit may have an effect on the outcome of the other is insufficient to invoke the said provision.

04. It is pertinent to note that plaintiff as well as defendants have not disputed the fact of pendency of suit in same Court having jurisdiction to decide the dispute between same parties or through their legal representatives involved in both suits. The defendants have filed copy of previously instituted suit on record. The plaint of previously instituted suit reveals that defendants have filed previous suit for declaration of ownership of Gat No. 125 admeasuring 2H43R. In present case, the above suit property and also another suit property i.e. Gat No. 125 admeasuring 40R are involved. In previously instituted suit defendants have prayed for declaration that they are joint owner of 2H 43R in Gat No. 125. In present suit, plaintiff prayed for declaration that he his owner of 2H 43R and 40R in Gat No. 125. There is no question in respect of 40R suit property involved in previously instituted suit.

05. The only question is that with respect to suit property of 40R involved in present suit. While to decide this question it is necessary to decide whether a collateral or incidental issue is one that is incidental to a direct and substantive issue. It means when the question raised in the subsequent proceedings have no bearing on the findings made in the earlier proceedings, it cannot be said that the matter in issue is directly and substantially the same between both the parties in the two suits. In previous suit defendants pleaded that they are owner of 2H 43R and 4H 81R in Gat No. 215. It means they have pleaded that they are owner of suit property involved in present suit including 40R. Therefore, the issue of ownership of property including suit property involved in present suit is matter in issue directly and substantially between the parties.

06. The another test of applicability of Section 10 of Civil Procedure Code is that whether on a final decision being reached in the previously instituted suit, such decision would operate as *res judicata* in the subsequent suit. In present suit, plaintiffs pleaded that they are owner of 40R and in previously instituted suit defendants pleaded that they are owner of 2H43R. Explanation IV of Section 11 of Civil Procedure Code provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Thus, the matter in issue directly and substantially in issue involved in present suit and previously instituted suit between the same parties or between parties under whom they are litigating under the same title is pending before Court. Further, the present suit is instituted after institution or presentation of previously instituted suit. Thus, present suit shall be stayed till the decision of previously instituted suit bearing R.C.S. No. 120 of 2023. Hence, I pass following order.

-: Order :-

1. Application is allowed.
2. Present suit be stayed till the decision of R.C.S. No. 120 of 2023 under Section 10 of the Civil Procedure Code.
3. Parties to take note.

Date :- 13.04.2026

Renapur

(D. M. Gitte)
Jt. Civil Judge Junior Division,
Renapur