

ORDER BELOW EXHIBIT No. 26

1. The defendants have filed this application as per section 10 of the Code of Civil Procedure for stay of this suit.

It is contended that, the plaintiff has instituted this suit against the defendants for declaration and perpetual injunction in respect of the suit property described in plaint para no. 1. The defendant nos. 1 to 4 in this suit has already instituted suit bearing R.C.S. No. 107/2011 against present plaintiff for declaration and perpetual injunction in respect of properties. The suit properties in both the suits are same. The parties in both the suit are almost same. Both the suits are pending in the competent Court. Under such circumstances as per the provisions of Section 10 of the Code of Civil Procedure, this suit is liable to be stayed. Hence, prayed for stay of this suit.

2. Plaintiff filed say vide Exh. 27. Plaintiff denied contents in the application. It is contended that, in both suits, plaintiffs are different, the reliefs claimed are different. Under such circumstances, this application has been filed only to prolong this suit. Hence, prayed for rejection of this application.

3. Heard learned counsel appearing for both the sides. Learned counsel appearing for the defendants drawn attention of this Court on the certified copy of Exh. 1 in R.C.S. No. 107/2011 and submitted that, the subject matter in both the

suit is the same, parties in both the suits are almost same. Under such circumstances this suit is liable to be stayed.

As against this, learned counsel appearing for the plaintiff submitted that, the reliefs claimed in both the suits are different, as well the parties in both the suits are also not same.

4. This Court carefully gone through the submission of both the learned counsels and also the pleading of both the parties in both the suits. In R.C.S. No. 107/2011 present defendant nos. 1 to 4 are the plaintiff and present plaintiff is a defendant no. 1. In the R.C.S. No. 107/2011 plaintiffs have claimed relief of declaration that the alleged so called deed dated 29/05/1989 is illegal and not binding upon them and also claimed relief of injunction restraining the defendants from alienating the suit properties as well as making any change in the record of rights. In this suit, the defendant nos. 1 to 4 are the plaintiff in R.C.S. No. 107/2011 and defendant no. 1 in suit bearing R.C.S. No. 107/2011 is the plaintiff in this suit. The relief of declaration claimed by the plaintiff in this suit is that, the defendant nos. 1 to 4 are not at all concerned with the suit properties and he is the sole owner of share of defendant nos. 1 to 4. He further claimed relief of right of pre-emption against defendant nos. 5 to 7 and claimed relief of restraining defendant nos. 1 to 7 from alienating the suit properties. Now from perusal of plaint in R.C.S. No. 107/2011 and R.C.S. No. 720/2012 it appears that, in R.C.S. No.

720/2012 the plaintiff has added defendant nos. 5 to 7 and claimed relief of pre-emption against these defendants. Remaining parties, suit properties and reliefs reclaimed are same in both the suits.

Now, so far as about the claim of plaintiff about right of pre-emption of share of the defendant nos. 5 to 7 is concerned, it is admitted position that, till date defendant nos. 5 to 7 have not sold their share in the suit properties. As per the provisions of Mohmedan law [Mulla's Mohmedan Law, (18th Edition), (4th Reprint 1985)] in para no. 226 of Chapter 13, pre-emption is defined as *“The right of shuffa or pre-emption is a right which the owner of an immovable property possesses to acquire by purchase another immovable property, which has been sold to another person”* In this section word *“which has been sold”* has been used. Para. 232 is about, when right of pre-emption arise only out of valid, complete and bonafide sale. In the matter, it is not the case of the plaintiff that, the defendant nos. 5 to 7 have sold their share in the suit properties and such sale is valid, complete and bonafide. Under such circumstances, at this stage as per the provisions of principles of Mohmedan Law, it is clear that the right of pre-emption is not arised to the plaintiff for invoking or asking for remedy of pre-emption. If the plaintiff is not entitled to get remedy of pre-emption against the defendant nos. 5 to 7, then the remaining parties and remaining pleading of the plaintiff in this suit and the remedy claimed by the plaintiffs in the

R.C.S. No. 107/2011 are same.

5. The object of the rule contained in section 10 of the Code of Civil Procedure is to prevent Courts of concurrent jurisdiction from simultaneously entering and adjudicating upon parallel litigation in respect of same cause of action, the same subject matter and the same relief. The policy of law is to confine plaintiff to one litigation. This restricts multiplicity of suits & possibility of contradictory verdicts by two or more Courts in respect of same relief.

In the suit bearing R.C.S. No. 107/2011 and the suit bearing R.C.S. No. 720/2012 the fact in issue is substantially the same, the suit bearing R.C.S. No. 107/2011 i.e., previously instituted suit is in the Court having competent to grant the relief claimed in the said suit, the parties in both the suit are almost same and both the parties are litigating under the same title. Under such circumstances, the subsequently instituted suit is liable to be stayed. Hence, this Court pass following order.

ORDER

1. The trial of suit bearing R.C.S. No. 720/2012 is stayed till final disposal of suit bearing R.C.S. No. 107/2011 or till further order.
2. Cost of the application shall be the cost in cause.

(D. B. Mane)

**Jt. Civil Judge, Junior Division,
Malshiras.**

Date : 14/08/2012