

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 01ST DAY OF OCTOBER 2008

BEFORE:

THE HON'BLE MR. JUSTICE B.S.PATIL

WRIT PETITION NO.11509 OF 2008(GM-CPC)

BETWEEN:

Smt.N C.Padmavathi,
W/o H.Shivaramaiah,
aged about 36 years,
Residing at Thaggahalli
Village, Koppa Hobli,
Maddur Taluk,
Mandya District.

... PETITIONER

(By Shri Nagaraj Damodar, Advocate)

AND :

1 H.N.Nanjegowda,
S/o late Ningegowda
@ Bajjegowda,
aged about 46 years,
Residing at Ujjanichannanadoddi
Village, Hamlet of Hurugalavadi,
Koppa hobli,
Maddur Taluk,
Mandya District.

2 H.Shivaramaiah,
S/o late Hombegowda,
aged about 42 years,
Residing at Thaggahalli
Village, Koppa Hobli,
Maddur Taluk,
Mandya District

.... RESPONDENTS

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to quash the impugned order dated 19.8.2008 passed I.A.No.V in O.S.NO.38/08 by the Additional Civil Judge (Jr.dn.) and JMFC Maddur vide Annexure-F.

This Writ Petition coming on for preliminary hearing this day, the Court made the following:-

ORDER

The challenge in this writ petition is to the order dated 19.8.2008 passed by the learned Additional Civil Judge, (Jr.Dn.) Maddur rejecting the prayer made by the petitioner seeking stay of the proceedings in O.S.NO.38/2008.

2. O.S.NO.38/2008 is filed by H.N.Nanjegowda-respondent no.1 herein against H.Shivaramaiah and also against Smt.N.C.Padmavathi, who is the petitioner in this writ petition. The said suit is filed seeking permanent injunction in respect of properties bearing survey nos.123/1A and P1 measuring 32 guntas and 123/1A and P2 measuring 32 guntas both situated at Thaggahalli village, Koppa hobli, Maddur Taluk. The petitioner herein who is the second defendant in



O.S.No.38/2008 filed the application seeking stay of the proceedings contending that in a previously instituted suit bearing O.S.NO.185/2006 by her minor children represented through natural guardian- the petitioner herein, she has sought for partition, separate possession and also for permanent injunction in respect of several items of properties including the suit schedule properties in O.S.No.38/2008 and therefore as the properties involved in both the suits and the relief sought in both the suits are similar, later suit instituted by the first respondent required to be stayed as per the provisions contained under Section 10 of the Code of Civil Procedure, 1908. This application having been rejected by the Court below, the petitioner is before this Court in this writ petition.

3. I have heard the learned Counsel for the petitioner and perused the materials on record. It is seen that the suit in O.S.NO.185/2006 is instituted not by the petitioner herein but by her four minor children. No doubt, the petitioner is representing them in the said



suit as their natural guardian. It is also seen from the records that suit in O.S.NO.185/2006 is filed in respect of several properties seeking the relief of partition, separate possession and also for permanent injunction. The plaintiff in O.S.No.38/2008 is one of the defendants(6th defendant) in the said suit. There are five other defendants in O.S.NO.185/2006 against whom the minor plaintiffs therein have sought for partition. The present suit which is sought to be stayed is only for permanent injunction in respect of two items of properties which is filed against one H.Shivaramaiah and the petitioner Smt.Padmavathi. It is therefore clear from the above narration that the nature of the relief sought in both the suits and the parties in both the suits are different. Therefore, the matter does not fall within the purview of Section 10 of the Code of Civil Procedure, 1908 so as to enable the petitioner herein to seek stay of the proceedings of the suit instituted subsequently.



4. The essential requirement of Section 10 of the Code of Civil Procedure, 1908 is that the matter in issue in the suit instituted subsequently must be directly and substantial in issue in a previously instituted suit between the same parties or between the parties under whom or any of them they claim. As already adverted to herein above, the parties in both the suits are different. In fact, the petitioner herein Smt.N.C.Padmavathi is not a party in the suit instituted in O.S.NO.185/2006. She only represents the interests of her minor and is prosecuting the same as guardian of the minors. Therefore, there is no merit in this writ petition and the same is dismissed.

Sd/-
Judge