

ORDER :

The sole defendant in O.S. No.152 of 2003 is the revision petitioner, aggrieved by the non-passing of the orders in the memo, filed by the defendant in suit, to club the suit in O.S. No.25 of 2013 with the present suit in O.S. No.152 of 2003.

2) The revision petitioner is sole plaintiff in O.S. No.1 of 2004 which filed earlier against the revision respondent (plaintiff in O.S. No.152 of 2003) by name Dasappa and another Govindappa, none other than brother of Dasappa. That suit was for bare injunction. The contest of defendants therein with reference to the alleged mis-description of a boundary in the patta, which is the document as source of title, the plaintiff claims that the suit was withdrawn and dismissed vide order dated 08.11.2012. It is according to the revision petitioner, the plaintiff in O.S. No.1 of 2004 subsequently approached the revenue authorities who got it corrected the wrong description of boundary in the patta with reference to the ground realities. From the subsequent cause of action the revision petitioner as plaintiff, by name Sarvamangalamma against the self-same defendants 1 and 2 in O.S. No.1 of 2004, maintained the suit for bare injunction in O.S. No.25 of 2013. The revision respondent (as plaintiff) maintained suit in O.S. No.152 of 2003 is now pending for trial.

3) Undisputedly the evidence of defendant, who is the revision petitioner, is in progress after completion of the evidence of the plaintiff. It is also not in dispute of the fact that the Advocate-Commissioner was appointed, it appears, for recording of the existing physical features. Not necessary to go further into the facts and any necessity of demarcation and the boundary between Plot Nos.6 and 7; the memo sought by the plaintiff is to club the O.S. No.25 of 2013 with the suit O.S. No.152 of 2003 as dispute involved between the plaintiff and defendant supra of O.S. No.152 of 2003 and the plaintiff and the 2nd defendant in O.S. No.25 of 2013 is one and the same, but for additional co-defendant in O.S. No.25 of 2013 is brother of the plaintiff in O.S. No.152 of 2003.

4) It is the submission that the trial Court ought to have been accorded permission on the memo and not chosen to pass, however proceeding further with the trial of the suit O.S. No.152 of 2003.

5) It is the submission of the learned counsel for the revision-respondent (plaintiff in O.S. No.152 of 2003) that the suit is almost at the fag end as D.W-1 already examined and coming for further evidence of defendants and the suit is of the year 2003 and the memo is filed in the year 2015 and at this stage seeking by memo to club both the suit is nothing but putting spokes to disposal and to drag the matter as far as possible.

6) Heard both sides and perused the material on record.

7) The core issue as referred supra is the boundary dispute between plot No.6 and plot No.7 and to ascertain the entitlement of the injunction relief pursuant to the respective suit claims in both the suits. A perusal of the record, no doubt, shows appointment of an Advocate-Commissioner to demarcate the boundary may lessen the much oral evidence to be introduced however, not sought by any of the parties to the lis. It is needless to say even the plaintiff in O.S. No.152 of 2003 again to adduce evidence as the 2nd defendant in O.S. No.25 of 2013 and the defendant in O.S. No.152 of 2003 as plaintiff in O.S. No.25 of 2013 has to begin the suit and adduce evidence and the evidence to be adduced in both the suits in the lis involved in relation to same subject matter when practically one and the same. It is nothing but inviting duplication of evidence and taking valuable time of the Court and wasting valuable time of the parties, apart from inviting conflicting and separate verdicts, if any, which has to be avoided. Basically the clubbing of suits or simultaneous trial is necessary as part of the procedural trail for effective adjudication of the civil lis.

8) Having regard to the purpose and object behind the memo to be considered by the trial Court, with no orders passed, kept pending for more than a year, this Court feels it just, to subserve the ends of Justice, to direct the trial Court to club the suit in O.S. No.25 of 2013 with the suit in O.S. No.152 of 2003 part heard matter, and treat the evidence of the plaintiff in O.S. No.152 of 2003 on 'P' series as the evidence of defendants in O.S. No.25 of 2013 with also liberty to examine Govindappa, if necessary, by any of the parties as Court witness and permit the plaintiff in O.S. No.25 of 2013 (sole defendant in O.S. No.152 of 2003) to adduce evidence for both the suits by adducing evidence on D-series, for more clarity and to avoid confusion, so also to exhibit all the documents of the plaintiff in O.S. No.152 of 2003 for both the suits on A-

series and for the defendant in O.S. No.152 of 2003 (plaintiff in O.S. No.25 of 2013) on B-series. It is needless to say, the trial Court to permit the plaintiff in O.S. No.152 of 2003 to adduce any further evidence including by recalling of any evidence for further chief-examination with opportunity to further cross-examine by plaintiff in O.S. No.25 of 2013.

9) As the suit is of the year 2003, the trial Court shall, as per the letter and spirit of Order XVII C.P.C, make every endeavour to complete the trial preferably within three months so as to dispose of within four months from date of receipt of this order; else to seek further extension of time, if there is any practical difficulty by bringing it to the notice of this Court.

10) With the above observations, the revision is disposed of by directing the trial Court to conduct common trial in both the suits i.e., O.S. No.25 of 2013 and O.S. No.152 of 2003.

11) Consequently, miscellaneous petitions, if any, shall stand dismissed. There is no order as to costs.

DR.JUSTICE B.SIVA SANKARA RAO

Dt.19.07.2016

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