



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 24842 OF 2022 (GM-FC)

BETWEEN:

REETH ABRAHAM,

...PETITIONER

(BY SRI. SURESH S LOKRE., SENIOR COUNSEL A/W
SRI. SHRAVAN S LOKRE.,ADVOCATE)

AND:

SUNIL ABRAHAM,

...RESPONDENT

(BY SMT. S K PRATHIMA.,ADVOCATE)

Digitally signed
by SHARADA
VANI B.
Location: HIGH
COURT OF
KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ALLOW THE ABOVE WRIT PETITION. QUASH THE ORDER DATED 25.11.2022 UNDER I.A. NO. 9 PRODUCED AT ANNEXURE-A PASSED BY THE LEARNED 1ST ADDL. PRINCIPAL JUDGE FAMILY COURT BANGALORE, IN O.S.NO. 137/2017, DISMISSING THE I.A. U/S 151 OF THE CPC FOR CLUBBING OF THE SUIT ALONG WITH O.S NO. 220/2022, AND ALLOW THE SAME.



THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The Petitioner – wife is knocking at the doors of Writ Court for assailing the order dated 25.11.2022 whereby the learned I Additional Principal Judge, Family Court at Bengaluru in O.S.No.137/2017 having dismissed her application in I.A. No.9 (Annexure-A), has refused to club two pending suits for a common trial and disposal. Learned counsel for the Petitioner vehemently argues that when the matter essentially relates to the same property and the *lis* is between the ex-spouses, the grant of the subject application was eminently warranted.

2. Learned counsel appearing for the Respondent – husband opposes the petition with equal vehemence contending that her client's suit in O.S No. 137/2017 is for partition, whereas petitioners injunctive suit in O.S No. 220/2022 is of recent times; the issues to be decided in the former are different from those in the latter; the



impugned order being the product of discretionary power, the indulgence of Writ Courts is not warranted.

3. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

(a) The parties are ex-spouses is not in dispute, their marriage having been dissolved by the Family Court. The challenge to the Dissolution Decree in MFA No. 1850/2020, is still pending, is true. However, that pendency is irrelevant inasmuch as even if their spousal status is restored by reversing the decree of dissolution of marriage, every spouse is an independent person *qua* the other.

(b) The Respondent – husband has filed a Partition Suit in O.S.No.137/2017 wherein the Petitioner wife is the defendant; similarly, in Petitioners Injunctive Suit in O.S.No.220/2022 the Respondent – husband happens to be the defendant; the subject property in both the suits is



the same. In both the suits, pleadings are complete and issues have been framed. The trial has begun in the partition suit, whereas it is yet to begin in the injunctive suit. Obviously, two suits will have their own issues; however, that *per se*, is no ground for denying the request for clubbing, especially when both the suits are at the hands of the same learned Judge.

(c) It is also true that in matter of transfer and clubbing of cases, a greater discretion lies with the Court in which they are pending. However, it is not a discretion of a Mughal Emperor. Lord Halsbury, more than century ago in SHARP vs. WAKEFIELD, 1891 AC 173, said that discretion means according to rules of reason and justice. Such an approach, at the hands of the Court below is not reflected. What prejudice would be caused to the Respondent should these suits be clubbed for the purpose of trial, is not forthcoming despite the vociferous submission of the learned counsel appearing for the Respondent.



(d) When parties are the same, property involved is same and Court in which the suits are brought is the same, ordinarily, the request for clubbing should not be denied, subject to all just exceptions, into which the argued case of the Respondent does not fit. This Court hastens to add that, there is no repugnancy between the issues framed in the partition suit and those in the injunctive suit and therefore, clubbing would save time, energy, and *vyavadhaana* of all the stakeholders. Of course, it is left to the Judge's discretion to render a common or separate judgment & decree.

In view of the above, this Writ Petition succeeds; a Writ of Certiorari issues quashing the impugned order; the learned Trial Judge is request to allow the subject application of the Petitioner for clubbing and try both the suits together.

Costs made easy.

**Sd/-
JUDGE**

Bsv