

IN THE COURT OF THE CIVIL JUDGE & JMFC,
AT SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur

Dated: 09th day of October 2025

O.S. No.79/2020

Plaintiff/s : Sharanamma,
W/o Late Guleppa @ Sanna Guleppa,
Aged about 51 years,
Agriculturist,
R/o Mathazanahalli village,
Sandur Taluk, Ballari District.

(By Sri. G.M., Advocate)

V/S

Defendant/s : Ennal Boraiah S/o late Karibasaiah
and another.

(By Sri. A.V.K., Advocate)

I.A.No.IV

Applicant : Prabhpathi S/o Ennal Boraiah
(Defendant No.2)

V/s

Opponents : Sharanamma,
W/o Late Guleppa @ Sanna Guleppa.
(plaintiff)

**ORDER ON I.A.NO.IV FILED UNDER SECTION 10 R/W SEC.
151 OF C.P.C. BY THE DEFENDANT NO.2**

The instant application is filed by the defendant No.2 seeking to stay the present *lis* till disposal of the suit in O.S. No. 59/2020 before the court of Hon'ble Senior Civil Judge at Sandur. The application is filed on 13.09.2023 when the matter was posted for hearing on other interlocutory applications.

2. It is submitted that the plaintiff *herein* filed the suit against the defendants for the relief of permanent injunction in respect of the suit property. According to applicant, the suit property and other properties are the ancestral properties of himself and plaintiff. The said properties are standing in the name of his grandfather by name Sanna Basappa. He has a brother by name Dodda Basappa. After their demise, the plaintiff and defendants have not partitioned the said properties. It is

contended that the plaintiff is not the sole owner of the suit property. But the plaintiff and defendant No.2 are the joint owners and in possession and enjoyment of the suit properties.

3. It is submitted that the defendant No.2 and his father have instituted suit against the plaintiff *herein* in respect of the suit properties and also other non suit properties for the relief of partition and separate possession before the Hon'ble Senior Civil Judge, Sandur in O.S. No. 59/2020. The said suit is pending for evidence. As such, the defendant No.2 has filed this application to stay the present suit till the disposal of the suit in O.S. No. 59/2020. If the application is allowed no prejudice will be caused to the other side. As such, the applicant prays to stay the present suit.

4. The plaintiff filed objections and prayed to dismiss the application. The plaintiff contended that he has filed this instant suit against the defendants for the relief of permanent injunction in respect of suit property contending that it belong to her father-

in-law Sanna Basappa. Thereafter, the suit property came to be mutated in the name of the present plaintiff by virtue of lawful mutation which is within the knowledge of the defendants. It is specifically contended that the plaintiff is in possession and enjoyment of the suit property.

5. According to plaintiff, after institution of this suit, the defendants with malafide intention got instituted the suit against her before the court of Hon'ble Senior Civil Judge at Sandur in O.S. No. 59/2020 for the relief of partition and separate possession to deprive her legal right. Therefore, the instant suit is not subsequent suit in O.S. No. 59/2020. Further, the subject matter in the present suit is not directly and substantially in issue between the same parties in O.S. No. 59/2020. In other words, the subject matter of the suit in O.S. No. 59/2020 is not the same as the subject matter of the present suit. Amongst other grounds, he prays to dismiss the application with costs.

6. Heard the argument of learned counsel for the

plaintiff and defendant No.2. Perused the records.

7. The points that arise for my consideration are:-

1. Whether there are grounds to stay the present suit in view of pending proceedings in O.S. No. 59/2020 before the court of Hon'ble Senior Civil Judge, Sandur ?

2. What order?

8. My answer on the above points are as follows:-

Point No.1 : In the Negative

Point No.2 : As per final order
for the following:-

REASONS

9. **POINT NO.1 :-** The instant suit is instituted by the plaintiff against the defendant No.1 and 2 for the relief of permanent injunction in respect of land bearing Sy. No.62, measuring 6.75 acres situated at Selepanahalli village, contending that she is the absolute owner and in peaceful possession and enjoyment of the said property. Without dwelling upon the merits of the case, it is apt to note that the instant suit is not subsequent suit to the proceedings in O.S. No. 59/2020 pending before the

court of Hon'ble Senior Civil Judge, Sandur.

10. Section 10 of CPC which is relevant for the purpose is herein below extracted.

Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

11. From reading of the aforesaid provision, it is relevant that where a suit is instituted in a court it shall not proceed with the trial in any other suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of section 10 of CPC, it is further required that the court in which

previous suit is pending is competent to grant the relief claimed. In the instant case, this court is competent to decide the suit of the plaintiff for the relief of permanent injunction and the Hon'ble court of Senior Civil Judge, Sandur is also competent to decide the suit for the relief of partition and separate possession. The words used in section 10 'No court shall proceed with the trial of any suit' makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit with the conditions laid down in the said provisions are satisfied. This is made to avoid the possibility of contradictory verdicts of two courts in respect of the same relief and it is claimed to protect the defendant from multiplicity of proceedings.

12. The learned counsel for defendant has filed the certified copy of plaint in O.S. No. 59/2020 wherein the property covered by this suit is also included in the said suit. But, the relief sought in both the suits are distinct. Further, the suit in O.S. No. 59/2020 is filed by the defendant No.1 and 2 in the instant suit

against the plaintiff *herein* and other 11 persons. However, it is important to note that the suit in O.S. No. 59/2020 is subsequent to the present suit in O.S. No. 79/2020. Therefore, the previously instituted suit i.e., the instant *lis* cannot be stayed. What can be stayed under section 10 of CPC is the subsequent suit. Therefore, the instant suit being not the subsequent suit cannot be stayed. Hence, on this sole ground the application deserves no consideration. Hence, this Court answers Point No.1 in the **Negative.**

13. **POINT NO.2:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A.No.IV filed by the applicant– defendant
No.2 U/sec. 10 R/w Sec.151 of C.P.C., is
hereby dismissed.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 9th day of October 2025)

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.