

IN THE COURT OF THE II ADDL CIVIL JUDGE
AND J.M.F.C., CHANNAGIRI

PRESENT: **SMT. MAHALAKSHMI G M.A.**
L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.

Dated: 3rd Day of May 2025

O.S.No.129-2020

BETWEEN :

G.M. Suresh and others

...Plaintiffs

AND

Jayappa and others

...Defendants

I.A. No.X

BETWEEN :

Jayappa and others

Defendant No.1 /Applicant ...

AND

G.M. Suresh and others

Plaintiff/ Opponent ...

1.	Provision under which the application is filed:	:	Sec. 10 of C.P.C. .,
2.	Relief sought for	:	Stay of proceedings
3.	Date on which the application is filed	:	19.03.2024
4.	Number of the application	:	IA.No.X
5.	Date on which the objections are filed by different opponents:	:	04.07.2024
6.	The date on which the orders is passed:		03.05.2025

ORDER ON I.A.No.X

The defendant No.1 filed the application to stay the further proceedings till disposal of the suit filed in OS No.13/2019 pending on the file of Senior Civil Judge, Channagiri.

2. SOME AND SUBSTANCE OF AFFIDAVIT FILED IN SUPPORT OF THE APPLICATION AS UNDER:-

In support of the application, the defendant No.1 sworn an affidavit and stated that, his written statement contention may be treated as part and parcel of this affidavit.

3. The applicant further stated that, he had filed original suit OS No.13/2019 before Senior civil Judge and

JMFC., Channagiri, seeking the relief of partition and separate possession by including the present suit schedule property. Wherein the father of plaintiffs in the present suit arrived as party. The present suit schedule property is also a subject matter in the said suit and he had taken the contention that the suit schedule property purchased about 31 years back and at that time the possession of the suit schedule property was delivered in favour of his joint family members and he and other defendants in the said OS No.13/2019 were enjoying the possession of property. He further stated that, the plaintiffs and their father colluding with each other had created some documents without knowledge of the joint family members with an intention to defraud their rights. On the basis of illegal documents created revenue records in respect of suit property into their names. Thereby it affects the rights of the present applicant. Under the above said circumstances it is proper and necessary to stay the further proceedings till the disposal of the OS No.13/2019 on the file of Senior Civil Judge, Channagiri. Thus, prays to allow the application.

4. The plaintiff filed statement of objection stating that, the present application had not supported by any documents. The application filed U/Sec. 10 of CPC., is not tenable in law. The present suit filed by him against the defendants claiming the relief of permanent injunction relating to the suit property. The present plaintiff is not

the parties to the suit in OS No.13/2019 alleged to had been filed by the defendants of this case and on that ground the present application is not tenable in law. The issue involved in this suit is with regard to the lawful possession of plaintiff and the interference of defendants with the possession of the suit property by the plaintiffs.

5. The defendants themselves stated in the affidavit that, they filed OS No.13/2019 for partition and separate possession of properties in which present suit property is also included. But it is not the case of the defendants that earlier the plaintiff or their father are the joint family members. Merely the defendants of this suit included the suit property without any base alleging that they purchased the suit property before 31 years back and possession was taken by them but no documents are produced either in this case or in OS No.13/2019. The present application filed by the defendant when the case is posted for defendants evidence to protract the proceedings of the case without any bonafides. The intention of the defendant can be gathered by looking into the order sheet of this case. Thus, prays to dismiss the application.

6. Based on the rival contentions raised by both the parties, the following points would arise for my determination.

POINTS

- 1. Whether the defendant made out grounds to stay the present case proceedings still**

disposal of OS.13/2019 on the file of Senior Civil Judge and JMFC Court, Channagiri?

2. What Order?

7. Heard the learned Advocates appearing for plaintiff. Despite provided sufficient opportunity, the defendant not addressed his arguments on application. Perused documents placed on record, my answer to the above points are as under:-

POINTS

Point No.1: In the Negative

Point No.2 : As per final order

for the following:

:: REASONS ::

8. POINT No.1:- The instant application filed by the defendant when the case is posted for further cross of PW-1 by allowing the application preferred by the plaintiff by recalling and reopening the case from the stage of defendants evidence in the present suit upon application preferred by the defendant side.

9. It emerges from the plaint pleadings that the plaintiff has filed the present seeking Permanent Injunction over suit schedule property against the defendants.

10. The defendant No.1 has sought for stay of the proceeding in the present suit till the disposal of the

O.S.No.13/2019 pending on the file of **Senior Civil Judge and JMFC Court, Channagiri.**

As per Section 10 of CPC., 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 were such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in a Court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court.

11. As admitted by the defendant No.1 herein, He had made father of plaintiff as party in O.S.No.13/2019. The present plaintiffs are not the parties to the suit in OS No.13/2019 filed by him for the relief of partition and separate possession by including the present suit schedule property. In the both cases, the nature of relief sought by the plaintiffs and defendants are all together different. The present suit is for the relief of permanent injunction with respect to suit schedule property and in the other hand the defendant has sought partition and separate possession relief in OS No.13/19. As admitted by the defendant No.1 herein he had made father of plaintiff as party in OS

No.13/201. By including the present suit schedule property. The said fact is not disputed by the plaintiffs in the present suit. Admittedly the present plaintiffs are not the parties to the suit filed by the defendant No.1. As per the admitted facts both parties are not in dispute with regard to the suit schedule property is concerned. Though the suit schedule property is subject matter of the both cases but the nature of relief sought by the plaintiff and defendant are all together different. The applicant has not placed any documents in support of his case. Though the applicant has not placed any documents as per the admitted facts in the pleadings as well as examination of PW.1 it is this court can draw inference that the suit schedule property is the subject matter of the both suits. But the relief sought by the both parties are all together different.

12. The plaintiff herein as claimed the different relief on the basis of registered gift deed document with respect to suit property. When the parties to the suit are different as same cannot be considered as directly and substantially involved in the present suit. Though the plaintiff herein are the sons of Malleshappa who is non other than brother of defendant No.1/Jayappa. According to the defendant No.1 the suit schedule property is one of the joint family and ancestral property. On that ground he has filed the suit for partition and separate possession before the Senior Civil judge and JMFC Court, Channagiri. But the

present suit filed by the plaintiff asserting that the suit schedule property is their father's property and sought the relief of permanent injunction of their possession based on the registered gift deed. Hence the nature of relief sought by the both parties are all together different from each other. Hence, the application filed by the defendant No.1 is not survive for consideration at this stage. Thus, this court answered the above **point in the Negative.**

13. Point No.2: As a result, I proceed to pass the following;

ORDER

**The IA No.X filed by the defendant No.1
U/Sec. 10 of CPC., is hereby rejected
For further cross of PW.1 with out
fail.**

(Dictated to the stenographer typed by her directly on computer, corrected and then pronounced by me in Open Court on 03rd day of May 2025)

Sd/-
**II Addl. Civil Judge & J.M.F.C.,
Channagiri.**