

**COMMON ORDERS ON PENDING
APPLICATIONS**

Perused the interim applications on record and also perused entire materials on record.

It is surprise to note here that plaintiffs are filing applications as per whims and fancies for their personal benefit and using the Court to get their personal financial benefit in all the stages. Let me elaborate the scenario.

This suit filed by the plaintiffs for the relief of partition and separate possession against 19 defendants stating that, the suit properties are joint family properties. They have made agricultural land NA plot and open plots as suit property. But, no descriptions have been given by the plaintiffs.

IA No.3 filed by the plaintiffs U/O-XXXIX Rule 1 and 2 for the relief of not to alienate the suit property. This Court has granted ex-parte temporary injunction on 12.07.2018. But till the date they never come forward to argue on the IA No.3 on merits.

Likewise, IA No.4 filed by the proposed defendant No.20 on 20.07.2018. Plaintiffs have filed objections but, the proposed defendant No.20 filed a memo on 22.07.2025, stating that this proposed

defendant No.20 settled this matter with respect to suit schedule A property Sy No.134/3 and filed application U/O-XXIII Rule 3 of CPC and same is allowed on 16.07.2019. Hence, IA No.4 dated 20.07.2018 which was filed by the proposed defendant No.20 was infructuous. Hence, he has prayed that IA No.4 dated 20.07.2018 as not pressed by this proposed defendant No.20.

It is further noticed that another IA filed by the plaintiffs U/O-VI Rule 17 R/w Sec.151 of CPC on 15.02.2025 with a prayer to deletion of schedule B property bearing SY No.3/3 measuring 1 acre 25 guntas by stating that there are technical error occurred at the time of filing plaint. Unfortunately the said IA allowed by this Court on 18.03.2025.

It is further noticed that plaintiffs have filed IAs U/O-XXII Rule-4, U/O-XXII Rule-9 and Sec.5 of Limitation Act for bringing legal heirs of defendant No.18 and also another IA U/O-XXXII Rule-3 of CPC with a prayer to appoint defendant

No.18(a) who is natural father of minor son defendant No.18(b).

It is further noticed that plaintiffs filed another application U/O-XXII Rule-4 r/w Sec.151 of CPC with a prayer to permit them to bring legal heirs of defendant No.15 on record. The said application allowed by this Court on 26.03.2019, but till the date the plaintiffs not at all filed amended plaint.

Further the proposed defendant No.22 to 37 have filed application U/O-I Rule-10 R/w Sec.151 of CPC to implead them as parties as they have constructed the houses in the suit property i.e., suit schedule B bearing Sy No.86 which is measuring 4 acres 7 guntas. They have stated that 180 people have constructed the houses in the above suit property, hence this suit land is not available for partition.

Further, the plaintiffs have filed one more application U/O-I Rule-10 R/w Sec.151 of CPC with a prayer to implead proposed defendant No.20 as party to the suit as the said proposed defendant No.20

is the illegal purchaser of the suit property bearing Sy No.134/1 and hence he is also a necessary party to the suit.

The very plaintiffs filed a memo on 22.07.2025 and submitted that due to oversight in the said application dated 18.09.2019 the plaintiffs have mentioned the proposed defendant No.20 instead of 21. It is due to some technical mistakes occurred in the IA and plaintiffs are withdrawing the same as not pressed. He further stated that earlier the plaintiffs have filed IA dated 21.11.2023 U/Sec.151 of CPC seeking permission to carryout the amendment. But, the IA dated 21.11.2023 and memo dated 06.08.2024 are intending to withdraw by the plaintiffs. It is pertinent to mention here that the memo dated 06.08.2024 the plaintiffs narrated filing of the applications and information with respect to pending IAs.

It is further noteworthy point that the very plaintiffs filed application U/O-XXXIX Rule-4 R/w Sec.151 of CPC on 03.02.2020 with a prayer to vacate the ex-parte temporary injunction only to the Sy

No.134/2 and 134/3. They further stated that the Sy No.134/2 is divided into 134/2(A) and 134/2(B). Without any iota of documents they have stated the division is occurred. In the accompanying affidavit the GPA holder of the plaintiffs stated that these properties are non agricultural properties having residential plots. Hence, there is very much necessary to vacate the ex-parte temporary injunction on the said property. He also prayed this Court to vacate temporary injunction order with respect to remaining suit properties viz; Sy No.34/3, Sy No.34/5, Sy No.86, Sy No.34/6, Sy No.34/4, Sy No.3/3 and Sy No.134/1.

It is pertinent to mention here that the very plaintiffs filed application U/O-XI rule-17 with prayer to deletion of above stated RS No.3/3 measuring 1 acre 25 guntas and succeeded to get order by way of wrong submission.

The very plaintiff has also filed a separate memo on 06.11.2023 with the same averments of O-XXXIX Rule 4 IA

filed by them on 03.02.2020 by excluding RS No.3/3.

The very plaintiffs filed another application U/Sec.151 of CPC with a prayer to permit the plaintiffs to carry out the amendment as per the IA No.4 dated 06.09.2018, IA No.7 dated 12.11.2018 and IA No.11 dated 23.08.2021. In the accompanying affidavit plaintiffs stated that due to unavoidable circumstances and change of previous Advocate the delay caused by them.

The proposed defendant No.22 to 37 have also filed application Sec.151 CPC with a prayer to drop these proposed defendants with deletion of the property bearing SY No.86, which is one of the suit property.

On perusal of these materials on record, it is clear that plaintiffs are using the Court for their illegal financial personal benefit. Once they settled the matter with proposed defendants they simply filing the memo and not press the relief prayed against them and also prayed to deletion of the said properties. The

intention of the plaintiffs is crystal clear. Though the suit is filed in the year 2018, till the date the plaintiffs not at all commenced their evidence and they are busy in getting favourable orders from the Court in deletion of the parties and properties. According to their own version some of the suit properties i.e., Sy No.86 and Sy No.134/2 residential plots are formed. Admittedly, the plaintiffs have not at all made these house owners as a parties to the suit. Looking to the demeanor of the plaintiffs it is on the facet clear that plaintiffs are using legal means for their illegal acts they are succeeding to take advantage of pending suit to create fear in the owner constructed houses in the suit properties. The nature of the suit property itself is not clear. The plaintiffs are not at all diligent in carrying the amendment. As per Order-XI Rule 18 which emphasizes that ; “ **Failure to amend after order.** - *If a party ho has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if*

no time is thereby limited then within 14 days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such 14 days, as the case may be unless the time is extended by the Court.”

It is clear that the plaintiffs no way permitted to carry out the amendments. Hence, looking to the inordinate delay caused by the plaintiffs all the amendment orders dated 06.09.2018, 12.011.2018 and 23.08.2021 are hereby recalled.

Looking to the demeanor of the plaintiffs and circumstances of the case with all developments, I incline to recall the order dated 18.03.2025 by exercising power conferred U/Sec.151 of CPC. Looking to all the applications filed by the plaintiffs till the date, no plausible explanation put forth by the plaintiffs in support of their applications and with respect to the nature of the suit properties.

It is surprise that the plaintiffs have filed O-XXXIX Rule 1 and 2 and got ex-parte temporary injunction order in their

favour, the very plaintiffs have also filed O-XXXIX Rule-4 to vacate the same with respect to some of the properties as stated supra and continue the stay with respect to some of the properties as mentioned supra. The very behavior of the plaintiffs clearly demonstrate that they are using legal mechanism by keeping pending of this suit for their personal financial benefits. It is nothing but abuse of the due process of law and justice is becoming mockery. This Court never sustain such type of attitude of the plaintiffs in further any manner. Hence, I proceed to pass the following :

ORDER

IA filed by the plaintiffs U/O-XXXIX Rule-4 is hereby rejected with a compensatory cost of Rs.10,000/-.

The memo filed by the defendant No.20 dated 22.07.2025 is hereby rejected.

The application filed by the plaintiffs U/Sec.151 of CPC dated 22.07.2025 is also hereby rejected with a cost of Rs.5,000/-.

Costs shall be paid to DLSA.

Payment of cost is condition precedent.

For hearing on maintainability of the suit call on 01.09.2025.

I Addl. Senior Civil Judge & CJM.,
Dharwad.