

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L.HONOLE, B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE AND JMFC, KALAGHATAGI**

DATED THIS 15TH DAY OF JULY 2026
O.S. No.50/2023

PLAINTIFF :

Smt. Padmavati W/o Kallappa
Basarikoppa

(Sri. M.B.J./G.G.G., Adv)

Vs

DEFENDANTS:

Smt. Shantavva W/o Kallappa Koti
and others

(D-1-Sri. V.R.G., Adv)
(D-2 to 4 Sri. S.R.H., Adv)

PARTIES TO IA No.11

APPLICANT:

Nagappa s/o Kallappa Koti
and others

Vs

OPPONENT:

Smt. Padmavati w/o Kallappa Basarikoppa

ORDERS ON I.A. NO. 11

The defendant No.2 to 4 have filed this
application u/o 14 rule 5 of CPC for recast of issue
No.3

2. This application is supported with affidavit of defendant No.2. It is contended that plaintiff is claiming to be the daughter of defendant No.1 through late Kallappa and same is denied by defendants. The paternity of plaintiff is in question and burden of proof is to be fixed on plaintiff. This court framed issue No.3 casting burden upon defendant No.2 to 4 and same is ordered to be reasted and burden is to be fixed on plaintiff. It is submitted that to arrive correct conclusion it is just and necessary to allow the application. Hence, prays for allowing the application.

3. The plaintiff has filed objection denying the contents of application. It is contended that to protract the proceedings the defendants have filed this application. The evidence of parties is completed and matter is posted for arguments of defendants at that time this application has been filed. The defendants at the flag end of the matter filing application one or the other reasons to drag on the proceedings. The defendants have failed to narrate proposed issue required to be recasted. The application is ambiguous and same is liable to be dismissed. This court on the basis of pleadings of parties framed the issue and there is no need to recast issue No.3. Therefore, prays for dismissal of application.

4. Heard the arguments.

5. The following point arise for my consideration.

1. Whether issue No.3 is required to be recasted shifting burden of proof on plaintiff?

2. What order?

6. My answer to above point is in the affirmative for the following...

REASONS

7. **POINT NO.1:** The plaintiff has filed suit for partition and separate possession. It is contended that she was daughter of defendant No.1 through deceased Kallappa Koti. This fact is denied by defendant No.2 to 4. On the basis of pleadings of parties this court has framed issues and thereafter parties have led their evidence. The matter is posted for arguments of defendants at that time this application has been filed.

8. Learned counsel for defendant No.2 to 4 relied upon decision of Hon'ble High Court of Karnataka in W.P. No.105047/2024 (GM-CPC).

9. Per contra, learned counsel for plaintiff relied upon decisions of Hon'ble High Court of Karnataka in W.P. No.20499/2025, W.P. No.32806/2025 and MSA No.100082/2017.

10. Keeping in mind arguments advanced by learned counsel for both parties and pleadings of parties and above relied decisions of Hon'ble High Court of Karnataka, I have gone through the issue No.3 which reads as under:

Whether the defendants No.2 to 4 prove that defendant No.1 is not the wife and plaintiff is not the daughter of propositus Kallappa Koti as such suit of the plaintiff is not maintainable?”

11. It is contended that issue No.3 is framed fixing burden of proof on defendant No.2 to 4. Learned counsel for defendant No.2 to 4 argued that issue No.3 is in the negative form and negative cannot be proved. Admittedly, in the present case on hand the relationship between plaintiff and defendant No.1 that they are the daughter and wife of deceased Kallappa Koti is disputed by defendant No.2 to 4. The plaintiff has approached the court and the relationship of plaintiff with deceased Kallappa Koti has been disputed by defendant No.2 to 4. Under such circumstances, the burden of proof is to be fixed on plaintiff who approached the court claiming her legal right. As rightly argued by learned counsel for defendant No.2 to 4 negative issue cannot be proved. In the present case on hand issue No.3 is framed fixing burden upon defendant No.2 to 4 which is in the negative form. Therefore, court is of the opinion that issue No.3 is liable to be recasted fixing burden of proof on plaintiff. Accordingly, I have answered point No.1 in the affirmative.

12. **POINT NO.2:** In view of above discussion on point No.1, court proceed to pass the following:

ORDER

I.A.No. 11 filed by the defendant No.2 to 4 U/o 14 Rule 5 CPC is hereby allowed.

Issue No.3 is reasted as under:

Whether the plaintiff proves that she was the daughter of defendant No.1 through deceased Kallappa Koti?

No order as to cost.

(This Order is dictated to the stenographer directly on computer, then corrected and pronounced by me in the open court on this **15th day of July 2026**).

(R.L.HONOLE)
SENIOR CIVIL JUDGE & JMFC,
KALAGHATAGI