

IN THE COURT OF CIVIL JUDGE AND JMFC, MUNDARGI

PRESENT:- Smt. Jyoti B. Kaginakar.,

B.Sc., LL.B.,

Civil Judge and JMFC, Mundargi

Dated on this the 09th day of September, 2025

O.S.No.43/2020

PLAINTIFF/S:

Sharanabasappa S/o. Banneppa Jutlannavar,
Age: 68 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.
And others.

(By Sri. G.M.K Advocate)

//V/s//

DEFENDANT/S:

1. Parashuram @ Parasappa S/o Mariyappa
Jutlannavar, Age: 68 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.
And others.

(By Sri. A.K.J Advocate)

PARTIES TO I.A.XX

APPLICANT/S: Vidyarannya S/o Banneppa Jutlannavar.

...Plaintiff No.4

//V/s//

OPPONENT/S: Shivayogayya S/o Sangayya Sashimath and others.

...Defendants

I	Provision under which the application	:	Under Order 16 Rule 1(a) of CPC
ii	Relief sought for	:	For produce a list of witness
iii	The date on which the application is filed	:	25.02.2025
iv	Number of the application	:	20
v	The date on which the objections are filed by different opponents	:	12.06.2025
vi	The date on which the orders were passed on the said application	:	09.09.2025

(Smt. Jyoti B.Kaginakar)
Civil Judge and JMFC,
Mundargi.

ORDERS ON I.A.NO.9

I.A.No.20 is filed by the Learned Counsel for the plaintiff under Order 16 Rule 1(a) of CPC for produce a list of witness in support of the in the case of the plaintiff to adduced there evidence in favour of plaintiff.

2. It is stated that the plaintiff has already entered the witness box, his documents are marked as exhibits, but his cross-examination was taken as nil as the defendants failed to cross-examine him despite sufficient opportunity. The matter was thereafter posted for further evidence of the plaintiff.

3. The plaintiff submits that no list of witnesses has been filed so far and it is now just and necessary to adduce further evidence in support of his case. If the application is allowed, no prejudice will be caused to the defendants; whereas, if rejected, the plaintiff will suffer irreparable loss. Accordingly, the plaintiff prays that I.A.No.20 be allowed.

List of Witnesses

1) Manjuthayya S/o Channavirayya Halli,
Age: 48 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

2) Banneppa S/o Ningappa churi,
Age: 5 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

3) Bharamappa S/o Hucchappa Nagarad,
Age: 55 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

4) Veeresh S/o Shantalingayya Shastrimatha,
Age: 40 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

5) Anandappa S/o Ningappa Kaganur,
Age: 59 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

6) Veerayya S/o Basayya Nirvanimatha,
Age: 70 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

7) Chandrashekrayya S/o Mahantayya Hiremath,
Age: 70 years, Occ: Agriculture,
R/o: Hesarur, Tq: Mundargi, Dist: Gadag.

4. The defendants have filed objections opposing I.A.No.20, contending that the application is false, frivolous, and vexatious. They deny the averments made in the supporting affidavit.

5. It is further submitted that Defendants No.1 to 3 have already lodged criminal complaints against the witnesses sought to be examined by the plaintiff. The said witnesses are accused in Crime Nos.120/2022 and 113/2023 registered at Mundargi Police Station. It is alleged that they trespassed into the land of the defendants, demolished stone and wire fencing, constructed houses illegally, and dumped garbage and debris on the property.

6. The defendants argue that the proposed witnesses are inimical towards them, are biased, and have a vested interest in giving false evidence against the defendants. Permitting such witnesses would cause serious prejudice, harm, and loss to the defendants. Accordingly, the defendants pray that the names of Witnesses No.1 to 7 be deleted and I.A.No.20 be dismissed.

7. Heard the arguments of the Learned Counsels appearing for the parties and perused the materials on record.

8. Now the following points arise for consideration of this Court are;

POINTS

1. Whether the plaintiff has made out grounds for allowing I.A.No.20 ?

2. What Order?

9. The findings of this Court on the above points are as under;

Point No.1: In the Affirmative

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

REASONS

10. **POINT NO.1:** Legal scope and discretion. Order XVI Rule 1(a) of CPC contemplates that a party shall furnish list of witnesses whom he proposes to

examine. Allowance of additional witnesses or further evidence is a matter of judicial discretion guided by the interests of justice and fairness. The discretion must be exercised so as to advance adjudication on merits and avoid miscarriage of justice, while at the same time guarding against abuse and undue delay.

11. The plaintiff's affidavit states that he has been examined (documents marked) and that cross-examination was recorded as nil because the defendants did not choose to cross-examine. Under these circumstances it is fair and just to permit the plaintiff to call other material witnesses to prove the factual matrix (possession, cultivation, boundaries, tenancy/possession facts etc.) relevant to a suit for partition and possession. The names, occupations and addresses of the proposed witnesses indicate that they are local agriculturists from

the same area (Hesarur), which prima facie makes their evidence relevant to the factual issues before the Court.

12. The mere pendency of criminal proceedings against a witness does not render his testimony inadmissible. Accusation, or even conviction, affects only the weight and credibility of the witness; it does not automatically disentitle a party from producing him. The defendants may, at the time of trial, test the credibility and motive of any such witness by cross-examination or by placing the criminal records before the Court. That is a matter of appraisal of evidence, not a ground for exclusion at the stage of permitting a list of witnesses. Therefore the objection based on the existence of criminal cases against the proposed witnesses goes to weight, not to admissibility.

13. The defendants assert the witnesses are inimical and will give partisan evidence. Such an allegation, unsupported by concrete proof at this stage, cannot be a ground to deny the plaintiff the right to call his witnesses. If any of the proposed witnesses engage in intimidation, disturbance or contemptuous conduct, the defendants may approach the Court with specific instances; the Court will then deal with such misconduct. But suspicion of bias alone is not a sufficient reason to prevent examination of witnesses. Permitting the plaintiff to file the list and call his witnesses will not cause irreparable prejudice to the defendants. The defendants will have full and fair opportunity to cross-examine every witness, to place rebuttal evidence, and to highlight any criminal incidents or bias in their evidence. To protect the interests of both sides and to ensure expeditious trial, the Court will impose reasonable conditions.

14. It is relevant that the cross-examination of P.W.1 stood “nil” because defendants did not choose to proceed with cross-examination at the time. The defendants cannot now, without adequate justification, seek to deprive the plaintiff of calling his additional witnesses. In exercise of its discretion this Court must favor a fair trial where material witnesses are permitted to be examined and their evidence tested.

15. In the facts and circumstances of this case(i) the relevance of the proposed witnesses to core issues of possession/occupation and partition; (ii) the absence of cogent foundational material showing that the witnesses are unfit or incompetent to testify; and (iii) the availability of adequate procedural safeguards for defendants to test the witnesses veracity the Court finds that the plaintiff has made out sufficient grounds for allowing I.A.No.20.

**With these observations, this Court has answered
Point No.1 in the Affirmative.**

16. **POINT NO.2:** For the aforesaid discussion on
Point No.1, this Court proceeds to pass the following;

ORDER

I.A.No.20 filed by the learned
counsel for the plaintiff is hereby
allowed.

*(Directly typed by me on my laptop, corrected, then printed and
pronounced in the Open Court on this the 9th day of September, 2025)*

**Sd/-
(Smt. Jyoti B. Kaginakar)
Civil Judge & JMFC,
Mundargi.**