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IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI

Present

Sri. Kashinath V. Uppar

B.Sc. LL.B.

Civil Judge & JMFC., Jewargi.

Dated on this the 28th day of February-2026

E.P. No.04/2013

Decree holder: 1. Jainabi W/o Ladlesab and others.

(By. Sri. P.K., Advocate)

V/s.

Judgment debtor: Basavaraj S/o Hanamantraya Patil,

(By Sri.B.H.K., Advocate)

PARTIES TO I.A. NO.4 & 5

APPLICANT/S : Begumbee W/o Ladlesab
III Party applicant and others.
 V/S

OPPONENT : Modinsha & other

1	Provision under Section which the application is filed	U/O.21, Rule 97, 99, 101, R/w.Sec.47 of CPC. & U/Sec.151 of CPC,
2	Relief sought for	The determine the rights of the applicant and recall the order dated 22-06-2016
3	The date on which the application is	23-06-2016

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	filed	
4	Number of application	I.A.No.4 & 5
5	The date which the objection are filed by different opponents	29-06-2016
6	The date on which the orders were passed on the said application	28-02-2026

**COMMON ORDER ON I.A No.4 U/O 21 RULE 97, 101, R/w.
Sec.47 OF CPC and I.A.No.5 U/Sec.151 of CPC,**

The third party applicants have filed I.A.No.4 U/O 21, Rule 97, 99, 101, R/w. Sec.47 of CPC, and U/Sec.151 of CPC, to determine the rights of applicant of their fixed share in the petition schedule property and I.A.No.5 to recall the delivery warrant issued on 22-06-2016.

2. The first objector/applicant sworn to the affidavit stating that, the hon'ble court was pleased to issue delivery warrant to deliver the possession of the disputed property in favour of petitioners by removing the obstrucuter on or within 08-07-2016. Yesterday applicant came to know said fact when petitioner No.5 yelled before the public near to the disputed property that he would dispossess her and her daughters with the police help as he got order to do the same. Petitioner is the legally wedded wife of deceased Ladlesab. Applicant No.2 and 3 are my natural daughters and one Abdul

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Razak is her son born out our wedlock. Petitioner No.1 is the first wife of Ladlesab and other petitioners are the son and daughters of the born out of their wedlock. Disputed petition schedule property is the absolute property of the deceased Ladlesab. On his death the applicant along with her children and petitioners succeeded the property by virtue of inheritance. All are having specific right of share in the disputed property as per their personal law.

3. The applicant along with her two daughters have filed suit for partition and separate possession with respect of disputed house property bearing No.12-78. The same is item schedule "F" property in O.S.No.52/2013 on the file of this court. From the month of January 2013, I along with my children (other applicants) and petitioners are residing in the disputed house. Thereafter few days dispute arose among the family members with respect of shares in the properties pertaining to her husband. When applicant along with her daughters demanded share in the landed properties and house property (Petition schedule property), petitioners refused to allot our legitimate share. The applicant along with her daughters have filed a suit for

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partition and separate possession with respect of landed properties and disputed property in O.S.No.52/2013 on the file of this hon'ble court. The said case is posted on 02-07-2016. Petitioners appeared and filed their written statement denying the legal status of mine and my children with deceased Ladlesab. Petition denied applicant legal status with deceased her husband only with an intention to dupe her rights. However, their legal status is admitted by the same respondent No.1 Modinabasha in his written statement filed in O.S.No.25/2001 on the file this hon'ble court (copy of the same is produced herewith). Now the petitioners planned to dispossess applicant and her daughters from the petition schedule property taking undue advantage of decree in their favour against Basavaraj. The said decree is binding only to the Basavaraj but not applicant and her children are also tenants in common. The said fact is within the knowledge of petitioners.

4. There is no dispute that the disputed house property is the property of Ladlesab who is the applicant's husband. The applicant and her children being the legally wedded wife and daughters and son are having share right over the disputed house property. Till

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the share of applicant along with her daughters are determined they are having very right to be in possession over the disputed house property along with petitioners as the applicant and petitioners are tenant in common and entitled for share in the petition house property.

5. Petitioners have no right to dispossess applicant and her children as they were tenants in common, having share right in the disputed property. Petitioners with an intention to grab our rights over the disputed property filed this execution petition and obtained the order from this hon'ble court by suppressing the true facts. If the applicant rights are not determined in this execution petition and she dispossessed by virtue of the order of deliver warrant my rights will be infringed and the same amounts the disposal of the suit filed by her in O.S.No.52/2013 on the file this hon'ble court. Hence, the applicant prays the hon'ble court may kindly adjudicate the matter to determine our rights in the petition schedule property.

6. The decree holder filed a detailed objections that, the applicant/their counsel misconceived the provisions

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when the person/persons has/have to appear in the said provisions. The petitioners neither representatives nor the parties to the suit where the suit dismissed against him for default, further they neither purchasers of suit house sold in exaction of decree, or they tenant of the suit house claiming through judgement debtor. They are strangers to the suit house. The present petitioners are acting as tool of judgment debtor at the instigation of the said judgment debtor the present petition is filed only as to obstruct the delivery of warrant with intent to support the judgment debtor. When an application has been moved by the decree holders to detain the judgment debtor who causing obstructing for the delivery of possession by one or another pretext after having notice of the same and as to mislead the hon'ble court he filed the application for setting aside the ex-parte; even after having been appeared and specifically signed on the order sheet, immediately on the next day these petitions moved by the petitioners to the support of judgment debtor. It is pertinent to note here that in the yer 2013 i.e., on 25th November, the court Bailiff went to the suit house and he has resisted by these persons clearly establishing that the present petitioners acting as

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tool of judgement debtor and the report of Bailiff is evident available on hand of this hon'ble court. These persons are resisters acting under judgement debtor. The judgement debtor is obstructing the delivery of warrant by using his men in one or another pretext is apparent noticeable on the face of record. That it further submitted in the context that the present petitioners filed an original suit in O.S,No.52/2013 which is pending before the hon'ble court and in the said suit, the decree holder appeared and filed his detailed written statement denying the relationship with the one of the said person hence, it bars the remedy and it operates as stay of the present petitions. It is not the claim of the petitioners that, they are purchasers sold the suit house in execution of decree/any suit is dismissed against them for non prosecution in default to file the petition under these provisions in respect of the subject matter of the suit. That, earlier E.P.No.5/2009 filed against the judgement debtor and delivery warrant has been recalled as he obtained the stay order by filing regular second appeal RSA No.75341/2010 even at that the time the judgement debtor contested that he was in possession of the suit house. After the closing of the E.P. and liberty given to

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file fresh E.P. this E.P. is filed by the decree holders. The judgement debtor filed the original suit against the decree holder claiming that decree holders father namely Ladlesab Khaji executed an agreement of sale and he put him in possession of the suit house in O.S.No.48/1999,the suit has been dismissed. Thereafter, Jainabee and other daughters of her, filed suit for partition in O.S.No.2/2000 wherein the decree holder No.5 was the defendant in the said suit, the suit is decreed and immediately the decrees became final and binding on the parties to the suit, O.S.No.6/2007 is filed for recovery possession from the present judgement debtor. It is submitted that,someone name of Razak mentioned in another suit and the same is denied by the judgement debtor, as result the said document/written statement was not marked, mere mentioning name of Razak cannot be ground consider because there is no admission that he was the son of Begum bee he may be a some one and the present petitioners cannot take the shelter of the same. The a sale deed executed by the Razak available on record clearly evidenced that he not belonging to the family of the decree holders therefore, the present petitioners estopped to claim the same and more particularly he had

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been in abroad and his pass-port showing her father name as Asmath Ali and his date of birth showing on the pass-port is 1970 and the rights are determining in the suit field by them. Therefore, it bars the remedy under these provisions.

7. After considering the affidavit and objections filed by the both the parties this court is framed issues as under:

ISSUES

1. Whether the third party petitioners prove that, they are the legal legal heirs of ancestor Ladlesab ?
2. Whether the 3rd party petitioners are entitled relief claimed by them in their 3rd party petition ?
3. What order or decree ?

8. In order to prove claim of petition the 3rd party applicant petitioner No.1 present and examined as PW-1 and got marked 02 document as Ex.P.1 and 2 and 3rd party applicant are examined three witnesses as PW-2 to PW-4 and during the cross-examination of PW-2 the counsel for decree holder confronted the documents of decree holder and they marked Ex.D-1 to Ex.D-4, the

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counsel for decree holder cross-examined the witnesses at length.

9. Heard the arguments from the learned counsel for the plaintiffs, perused on records.

10. My findings on the above issues are as under:

Issue No.1 : In the Negative.

Issue No.2 : In the Negative.

Issue No.3 : As per final order for the following:

R E A S O N S

11. **Issues No.1 and 2:-** These issues are interlinked to each other, hence, to avoid the repetition of facts, taken together for common discussion.

The 3rd party applicant filed this application, the applicant No.1 is the second wife of the deceased Ladlesab and the petitioner No.2 to 5 are the children born wedlock of 3rd party applicant No.1 and deceased Ladlesab. They have right in the petition schedule property and they are possession in petition schedule property. Per contra, the decree holder take a contention that, the present applicant deliberately filed this application with an instigation of judgement debtor and also they denied the relations of 3rd party applicants along with their father by name deceased Ladlesab.

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12. 3rd party applicant in order to substantiate her claim she examined as PW-1 by way of examination-in-chief and got marked Ex.P-1 and Ex.P-2. In her evidence affidavit she deposed that, she is the 2nd wife of deceased Ladlesab and the wedlock of deceased Ladlesab and her the children born i.e., applicant No.2 to 5 and she filed a suit against deceased decree holder in O.S.No.52/2013. The suit was pending for consideration. The 3rd party applicants have rights along with decree holder. The 3rd party applicant prays to declare their shares in the petition schedule property.

13. The 3rd party applicant further examined three witnesses as PW-2 to PW-4. The witness by name Maheboobsab Khaji S/o late Khaji Qutubuddin is examined as PW-2 and he deposed that, the petitioner by name Jainabee is the first wife of deceased Ladlesab Khazi. Begumbee is the second wife of deceased Khazi. Out of their wedlock a son and two daughters born. Their names are Razak sab Khaji, Jareenabegum and Hasenabegum. Marriage of Begumbee and Ladlesab took place at Jewargi in the year 1977. Begumbee earlier married with Rasoolsab. After the death of Rasoolsab she got married with Ladlesab. They lead marital life at

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village Kolkur as well as Jewargi. He had seen their marriage. He was present at their marriage. Their marriage was performed as per their rituals.

14. The PW-3 and 4 are deposed that, they were the permanent resident of Kolkur village, tq: Jewargi, they were know the deceased Ladlesab Khaji. He had two wives by name Jainabee and Begumbee. They were well acquainted with deceased since, the year 1971. They know that deceased Ladlesab got married with Begumbee in the year 1977 at village Jewargi. Out of their wedlock a son and two daughters born. Their names are Razak sab Khaji, Jareenabegum and Haseenabegum. They lead marital life at village Kolkur as well as in Jewargi. They have seen their marriage. They were present at their marriage. Their marriage was performed as per their rituals.

15. In order to substantiate claim of the petitioner they produced the two documents. Ex.P-1 is the Nikhanama, Ex.P-2 is the Translation copy of Nikhanama. As per the translation copy of the Nikhanama wherein deceased Ladlesab and the applicant by name Begumbee D/o

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Gulam Jeelani Saheb was married in the presence of witnesses Syed Ameenuddin and Md. Osmanali sab.

16. The decree holder denied the relation of the applicant with the deceased Ladlesab. On perusal of records it shows that, admittedly, this Execution Petition filed by the decree holder filed a O.S.No.6/2007 for eviction and compensation against the judgement debtor and same is decreed on 21-02-2009. Thereafter, decree holder filed the execution petition. Further, this court was issued the delivery warrant. The judgement debtor was appearing before this court and submits that, he is ready to handover the possession of suit property. Thereafter, the 3rd party applicant filed the I.A.No.4 and 5 U/O 21 Rule 97, 99, 101 R/w.Sec.147 of CPC, 1908, stating that they have fixed share in the petition schedule property by restraining the respondents from dispossession the objectors.

17. It is the contention of the applicant that, she and applicant No.2 are the daughters of Ladlesab and applicant No.1 is the legally wedded wife of deceased Ladlesab. The applicants admitted that, the decree holder also the legal heirs of deceased Ladlesab, but the

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decree holder denied the legal status of applicants with the deceased Ladlesab. The judgement debtor produced the judgement copy of O.S.No.52/2013, wherein the present applicants are filed the suit for partition and separate possession against the decree holders and same was dismissed on 30-11-2016, on the ground that, the present applicants are not prove the their relation along with deceased Ladlesab. Now the 3rd party applicant filed this application for to decide the rights of the applicants. It is settled law that, when competent court decide the rights of the parties then subsequent suit is not maintainable. The rights of the 3rd party applicants rights was decided in O.S.No.52/20-13. Therefore, the application filed by the 3rd party applicant is not maintainable. Because it is hit by principle of res-judicata. Moreover, the decree holders have right in the petition schedule property. The original decree holder in O.S.No.06/2007 by name Basavaraj has obligation to handover the possession of the petition schedule property to the decree holder. Therefore, the application filed by the 3rd party applicant is deserves to dismissed. The evidence of PW-2 to PW-4 are not come to aid to the applicant. Moreover, this court is cannot beyond go

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against the his own decree. If the 3rd party applicants have right over the suit schedule property then they have option to challenge the judgment and decree passed in O.S.No.52/2013. Hence, this court is opinion that, the issues are framed by this court are not relevant to discussion once again. Hence, I answer Issue No.1 and 2 in the Negative.

18. **Issue No.3:-** In view of my findings on the above points, I proceed to pass the following;

ORDER

The application filed by the 3rd party applicant U/O 21 RULE 97, 101, R/w. Sec.47 OF CPC and I.A.No.5 U/Sec.151 of CPC, is hereby dismissed.

(Dictated to the stenographer, transcribed by him. The transcript revised by me, and then pronounced in the open court on this the 28th day of February, 2026)

(Kashinath V. Uppar)
Civil Judge & J.M.F.C.,
Jewargi.

ANNEXURE

List of Witnesses examined for the 3rd party applicant:

PW-1 : Begumbee W/o late Ladlesab

PW-2 : Maheboobsab Khaja S/o Khaji Kutbuddin

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PW-3 : Hyder jaani S/o Shaik Maheboob Policewale

PW-4 : Basanna S/o Malkappa Hannur

List of Documents exhibited for the 3rd party applicant:

Ex.P.1 : Nikhanama

Ex.P.2 : Translation copy of Nikhanama

During the cross-examination PW-2 is confronted the documents as under:

Ex.D.1 : Agreement.

Ex.D.1(a) : Signature of PW-2

Ex.D.2 : Receipt

Ex.D.2(a) : Signature of PW-2

Ex.D.3 : Agreement

Ex.D.3(a) : Signature of PW-2

Ex.D.4 : Receipt

Ex.D.4(a) : Signature of PW-2

List of Witnesses examined for the decree holder:

– Nil –

List of Documents exhibited for the decree holder:

– Nil –

(Kashinath V. Uppar)
Civil Judge & J.M.F.C.,
Jewargi.