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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 10th day of February-2026****E.P. No.01/2019****Decree holder:**

1. Rahimunnisa Begum W/o late Gafoor Khan Nadagouda,
Age: 54 years, Occ: household, R/o Plot No.70,
Sadat Hussain Manzil behind Darshanpur Scanning Center,
Devi Nagar, Shahapur.
2. Farzana Begum W/o Rizwan Ali Patel,
Age: 41 years, Occ: household, R/o H.No.5-415/15/11,
KBN College road, near A1 Farooq Masjid Islamabad colony,
GB, Neharu Gunj, Mominpura, Kalaburagi-04.
3. Rizwana Begum W/o Vikhar Ahmed,
Age: 40 years, Occ: Agri, R/o H.No.7-551,
Khurseed Manzil Gola Chowk, Mahadi Mohalla,
Mominpura, Kalaburagi-04.
4. Reshma Begum D/o late Gafoorkhan Nadagouda,
Age: 36 years, Occ: household, R/o H.No.70
Sadat Hussain Manzil,
Devi Nagar, Shahapur.
5. Imran Khan S/o late Gafoorkhan Nadagouda,
Age: 34 years, Occ: Agri, R/o H.No.70
Sadat Hussain Manzil,
Devi Nagar, Shahapur.

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5. IrfanKhan S/o late Gafoorkhan Nadagouda,
Age: 32 years, Occ: Agri, R/o H.No.70
Sadat Hussain Manzil,
Devi Nagar, Shahapur.

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

V/s.

Judgement debtor:

1. Bhimaraya S/o Basappa Kaklameli,
Age: 62 years, Occ: Agri,
R/o Wastari village, tq: Jewargi, dist: Kalaburagi.
2. Roshanbee W/o late Ameerkan,
Age: 84 years, Occ: Household,
R/o Kasarbosga, tq: Jewargi, dist: Kalaburagi.
3. Ayubkhan S/o late Ameerkan, Age: 47 years,
4. Shabbirkhan S/o late Ameerkan, Age: 47 years,
5. Liyakath khan S/o late Ameerkan, Age: 42 years,
6. Aziz Khan S/o late Ameerkan, Age: 36 years,
7. Balikbanu D/o late Ameerkan, Age: 32 years,
8. Rasheeda banu D/o late Ameerkan, Age: 29 years,

All Occ: Agri & household,
R/o Kasarabosba, tq: Jewargi, dist: Kalaburagi.

(Note: Represent the branch of Ameerkan)

9. Sheikh Abdul Hameed S/o Maheboob,
Age: 64 years, Occ:
R/o H.No.9-193, Abi Housing Society road,
near Makkah Masjid, Shant Nagar,
Shahabad, tq: Chittapur.

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10. Raheem S/o Sheikh Abdul Hameed,
Age: major, Occ: Service,
R/o H.No.9-193, Abi Housing Society road,
near Makkah Masjid, Shant Nagar,
Shahabad, tq: Chittapur.
11. Shabana Begum W/o Amjad Bukhari,
Age: 32 years, Occ: household,
R/o H.No.9-370, Jalal Mohalla Roshan Mandi,
Shorapur, dist: Yagir.
12. Rafique S/o Sheikh Abdul Hameed,
Age: major, Occ: student,
R/o ABL housing society,
Shant Nagar,
Shahabad, tq: Chittapur.
13. Noorjahan Begum W/o Syed Afsar Khadri,
Age: , Occ: household,
R/o H.No.13-28, Jalgar Mohalla,
Diggi Base, Shahapur, dist: Yadgir.
14. Shaheen D/o Sheikh Abdul Hameed W/o Syed
Fahimuddin Khadri,
Age: 43, Occ: Agriculture,
R/o H.No.13-28, Jalgar Mohalla,
Diggi Base, Shahapur, dist: Yadgir.
15. Sufiya Begum W/o late Rustumkhan, age: major,
16. Maqbul W/o late Rustumkhan, age: major,
17. Yousuf Khan S/o late Rustumkhan, age: major,
18. Wahid Khan S/o late Rustumkhan, age: major,

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19. Naseem Begum D/o late Rustumkhan, age: major,

20. Gawar Begum W/o late Rustumkhan, age: major,

21. Asiya Begum W/o late Rustumkhan, age: major,

All occ: Agri & household, R/o Wasari village,
tq: Jewargi, dist: Kalaburagi.

(By Sri.A.R.N., Advocate)

PARTIES TO I.A. NO.8

APPLICANT/S : Rahimunnisa Begum
III Party applicant and others.
V/S

OPPONENT : Bhimaraya & other

1	Provision under which the application is filed	U/O 151 of CPC.
2	Relief sought for	Draw another preliminary decree
3	The date on which the application is filed	29-08-2024
4	Number of application	I.A.No.8
5	The date which the objection are filed by different opponents	05-03-2025
6	The date on which the orders were passed on the said application	10-02-2026

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**ORDER ON I.A No.8 U/Sec. 151 OF CPC.**

The Decree holder counsel filed I.A. Order U/Sec.151 of CPC, seeking a relief of to pass preliminary decree declaring the petitioner share in respect of suit schedule property.

2. The J.D'r No.6 sworn to the affidavit stating that, the father of petitioner along with his brother and sister had filed a suit against 1st respondent and husband of 15th respondent and father of 16th to 21st respondent seeking relief of possession as to petition schedule properties on the file of this hon'ble court in O.S.No.135/1981 and same was decreed on 26-08-2006 holding that 2nd plaintiff who is my father along with other plaintiffs are entitled to recover possession of their share in petition schedule properties after determination of their share as per law. That 1st respondent being aggrieved by afore said decree had preferred an appeal before hon'ble senior civil judge, Jewargi in R.A.No.203/2006 and same was dismissed on 25-01-2014 by confirming afore said decree and being aggrieved by both decrees 1st respondent filed RSA before the hon'ble High Court of Karnataka, Kalaburgi Bench, in RSA No.200140/2014 and same is pending for consideration but there is no prohibitory orders against

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afore said judgement and decrees. That, as per the observation made in afore said judgement passed by the hon'ble court as well as hon'ble appellant court it is necessary to decide my share along with other petitioners to meet the ends of justice. As per law I and other petitioners together are entitled for 2/7th share in petition schedule properties. Therefore, applicant pray before the hon'ble court to draw a preliminary decree by declaring his share in petition schedule properties in pursuance of afore said decree.

3. The judgment debtor filed objections to I.A.No.8 that, this is an execution petition to execute a decree passed in O.S.No.135/1981. Therefore, petition to pass another preliminary decree is not maintainable. Ameer Khan and others filed a suit in O.S.No.135/1981 the suit was for declaration and possession. The suit was decreed on 26-08-2006. As per the decree the defendant No.1 of the suit i.e., Bheemaraya was directed to deliver possession of the suit property after determination of share of the plaintiff. Therefore, it is clear that, the share of the plaintiffs decree holder has not been determined at all. Unless the share of the plaintiff decree holder is determined the execution petition is not at all maintainable and consequently

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I.A.No.8 is also not maintainable. It was for the decree holder plaintiff to take appropriate steps for the determination of his share. The plaintiff has not taken any steps for determination of his share and therefore, the execution petition itself is not maintainable. The decree in O.S.No.135/1981 has not become final and conclusive against the judgment and decree passed in O.S.No.135/1981 the judgment debtors filed appeal in R.A.No.203/2006 which is dismissed by judgment and decree dated 25-01-2014. Against this judgment and decree the judgment debtor has filed a second appeal in RSA No.200140/2014 which is pending in the hon'ble High Court Karnataka, Kalaburagi Bench. There is no provision for passing a preliminary decree in execution petition. Hence, J.Dr, prayed that, the I.A.No.8 may be rejected.

4. Heard the both sides.

5. On considering the I.A, affidavits and objections, points would arise for my consideration are as under:

P O I N T S

1. Whether the I.A.No.12 filed by the applicants is deserves to be allowed ?
2. What order?

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6. My answers to the above points are as under:

Point No.1:- Negative.

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

REASONS

7. **Point No.1:-** Admittedly, this Execution Petition filed by the decree holder of judgement passed in O.S.No.135/1981 for declaration and recovery of possession against the judgment debtor and same is decreed on 26-08-2006. The said suit was decreed that, the plaintiffs are entitled to possession over the suit schedule property to the extent of their share over it and further defendant was directed that, deliver the possession of the suit property after determination of share of the Plaintiffs and also declared that, the sale-deed dated 22-02-1972 is null and void to the extent of share of the plaintiff in the suit schedule property. The decree holder filed this application for drawing a another preliminary decree to declare the share of the decree holder. The judgement debtor objected that, the application filed by the decree holder not maintainable and also the appeal in RSA No.200140/2014 pending before the Hon'ble High Court of Karnataka, Kalaburgi Bench. On perusal of judgement of O.S.No.135/1981, the

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hon'ble court was partly decreed and declared that, the decree holder is entitled possession over the suit schedule property to the extent of share over it and the judgement debtor is directed to deliver the possession of suit schedule property after determination of the share of decree holder.

8. It is settled law that, the execution petition is filed execution of decree. In the present petition the decree holder filed a execution of decree of O.S.No.135/1981. The said judgement is not decide the share of the decree holder, when preliminary decree does not specify the exact or quantified share of the parties it remains incomplete and in-executable, because an executing court is strictly bound by the decree and has no jurisdiction to interpret, it by determine share on its own. In the execution petition, the decree must be executed. Therefore, the decree holder have opportunity to file a final decree proceedings. The final decree proceedings is only the remedy available for to decide the shares. Therefore, this application filed by the decree holder deserves to dismissed and decree holder is liberty file a final decree proceedings against the judgement debtor. Hence, I answer point No.1 in the Negative.

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9. **Point No.2:-** In view of the my findings on Point No.1,
Hence, I proceed to pass the following:

ORDER

The interim application No.82 filed by
the decree holder U/Sec.151 of CPC, is
hereby dismissed.

(Dictated to the Stenographer, typed by him revised and corrected by me
and then pronounced by me in the Open Court on this 10th Day of February-2026).

(Kashinath V. Uppar)
Civil Judge & JMFC, Jewargi.

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