

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,  
SEDAM

**PRESENT:**

Sri SAGAR GURUGOUDA PATIL  
B.A., LL.B(Spl.)  
Senior Civil Judge & JMFC, Sedam

Dated: 28-02-2025.

**OS No.49/2021**

Plaintiff/s

:

Sidramappa S/o Late Saibanna Reddy  
Age: 64 years, Occ: Agriculture,  
Malkhed-J, Tq: Sedam, Dist: Kalaburagi.  
Through its SPA holder Asha D/o  
Sidramappa, Age: 24 years, Occ:  
Household, R/o Malkhed, Tq: Sedam, Dist:  
Kalaburagi.

(Smt/Sri.H.L.Ahmed, Advocate)

VS

Defendant/s

:

1. Shankar Reddy S/o Veerbhadrappa, Age: 38 years, Occ: Agriculture,
2. Lalitabai W/o Basavaraj Reddy, Age: 56 years, Occ: Agriculture & Household,
3. Shredevi W/o Mallikarjun Reddy, Age: 55 years, Occ: Agriculture & Household,
4. Nagamma W/o Late Shamrao, Age: 55 years, Occ: Agriculture, All R/o Malkhed-J, Tq: Sedam, Dist: Kalaburagi.
5. Kirankumar S/o Shivappa Talkin, Age: Major, Occ: Agriculture, R/o Near Veerbhadreshwar Temple, Malkhed, Tq: Sedam.

6. Basavaraj S/o Somshekhar Bhootpur, Age: Major, Occ: Agriculture, R/o Near Veerbhadrashwar Temple, Malkhed, Tq: Sedam.
7. PDO Gram Panchayat Malkhed, Tq: Sedam, Dist: Kalaburagi.
8. President Gram Panchayat Malkhed, Tq: Sedam, Dist: Kalaburagi.
9. Mallamma W/o Baburao Kadader, Age: Major, Occ: Household, R/o Halahalli, Tq: Bhalki, Dist: Bidar.
10. Eramma W/o Kalappa Reddy, Age: Major, Occ: Household, R/o Mominpur Malkhed, Tq: Sedam, Dist: Kalaburagi.

(D.1 to 3. Smt/Sri T.V.Patil, Advocate)  
 (D.4 by Smt/Sri.Syed Asif M. Advocate)  
 D.5 & 6 by Smt/Sri.E.S.Kulkarni.Advocate)  
 (D.7 to 10 Exparte)

**RANK IN IA 8**

Sidramappa : Applicant/s/Plft

VS

Shankar Reddy & others : Opponent/s/Defts

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is filed	25-01-2025
iv	Number of application	One
v	The date on which the objections are filed by different opponents	--

vi	The date on which the orders were passed on the said application	28-02-2025
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**ORDERS ON IA 8**  
**Under Order 39 rule 1 & 2 of CPC**

The plaintiff/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendants by way of temporary injunction from interfering with the possession of the plaintiff over the suit property till disposal of the suit.

2) The SPA holder of the plaintiff has sworn to an affidavit in support of IA and stated that the plaintiff has filed the suit for partition and separate possession. The plaintiff and defendants are owners and possessors of the joint family properties. The plaintiff is having share in the suit properties. The defendants and unknown person viz Hanamanthray Hugar are started putting up illegal construction over the suit property without obtaining permission from the Gram Panchayat. The defendants 1 to 3 are colluded with each other and they are hatching the plan to grab the share of the plaintiff. The plaintiff has made out prima facie case and the balance of convenience lies in his favour. Hence, prays to allow the IA.

3) The defendants 1 to 6 have not filed objections to IA.

4) On the basis of the above facts the following

points arise for my consideration:

- 1) Whether the plaintiff has made out prima facie case?
  - 2) Whether the balance of convenience lies in favour of the plaintiff?
  - 3) What order?
- 5) Perused the records. Heard arguments.
- 6) My answer to the above points are as under:
- 1) IN THE NEGATIVE
  - 2) IN THE NEGATIVE
  - 3) AS PER THE FINAL ORDER

for the following:

### **REASONS**

7) **POINT No.1 and 2:** Since these two points are inter related they are taken up together for common discussion to avoid repetition of the facts.

8) The relationship of the parties is not in dispute. It is not in dispute that one Saibanna Reddy was common ancestor of the plaintiff and defendants 1 to 4 and he was the exclusive owner and possessor of the suit property and non-suit properties. The previous RTC extracts show that earlier the suit properties were standing in the name of the common ancestor Saibanna Reddy. The suit is of the year

RTC extracts show that the suit properties are standing in the name of the defendants 1 to 3. The plaintiff has pleaded that the plaintiff and defendants are coparceners of the Hindu Joint Family and they are the owners and possessors of the suit properties. The defendant No.1 has also admitted the above facts. The same reveals that the plaintiff and defendants are in joint possession and enjoyment of the suit properties. Therefore, an interim injunction order cannot be passed restraining the defendants from interfering with plaintiff's possession over the suit properties.

9) The plaintiff has alleged that the defendant No.1 and unknown persons are illegally putting up construction over the suit property. It is to be noted that the suit is one for the relief of partition and separate possession. Therefore, if the construction made over the suit property and if ultimately succeeds then he would get share in the said construction also. Therefore, if the IA is not allowed no prejudice would be caused to the plaintiff. Therefore, this court is of the considered opinion that the plaintiff has not made out prima facie and the balance of convenience lies in favour of the defendants. Hence, I answer points 1 and 2 in the Negative.

10) **POINT No.3**: For the foregoing reasons, the following:

### **ORDER**

The application filed by the plaintiff under Order

39 Rule 1 & 2 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **28<sup>th</sup> day of February 2025.**)

(SAGAR GURUGOUDA PATIL)  
Senior Civil Judge & JMFC, Sedam.