

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: 16.08.2025.

**FDP No.4/2015**

Petitioners/s :  
Durgamma and others  
(Smt/Sri S.K.D. Advocate)

VS

Respondent/s :  
Padmamma & others.  
(R.1 to 3. Smt/Sri M.G. Advocate)  
(R.4 to 7 Smt/Sri M.V. Advocate)  
(R.8 to 10 Smt/Sri C.K.K. Advocate)

**RANK IN IA 5**

Durgamma and others : Applicant/s/Petitioners

VS

Padmamma and others : Opponent/s/Respondents

i.	Provision under which the application is filed	U/O 40 Rule 1 of CPC
ii	Relief sought for	Suit for declaration and injunction
iii	The date on which the	27-03-2025

	application is filed	
iv	Number of application	One
v	The date on which the objections are filed by different opponents	29-03-2025
Vi	The date on which the orders were passed on the said application	16-08-2025

**ORDERS ON IA 5**  
**Under Order 40 rule 1 of CPC**

The petitioners/applicants have filed this application under Order 41 Rule 1 of CPC and sought to appoint the receiver to carry out agriculture operation and deposit the yield of the crops grown in the suit properties with the court.

2) The petitioner No.4 has sworn to an affidavit in support of IA and stated that they have filed suit in O.S.No.94/2002. In the said suit this court held that plaintiff No.1 is first wife and plaintiffs No.2 to 6 are legitimate children of Bhimappa and Padmamma is second wife and defendant No.2 and 3 are her ill-legitimate children. In the appeal in RA No.206/2009 the Hon'ble Prl. District Judge, Kalaburagi set aside the judgment and decree of this court and molded the relief. Therefore, in RSA No.200239/2015 the Hon'ble High Court modified the shares of the parties. Accordingly, the plaintiff No.2 to 6 are entitled for 1/6th + 1/48th share each in the suit properties and plaintiff No.1 and defendant No.2 and 3 are entitled for 1/48th share each in

the suit properties.

3) The respondent No.2 and 3 are not allowing the petitioners to cultivate the suit lands and threatening the petitioners. The police also helping the respondents. The petitioners are having more than 90% share in the suit properties. But the defendants enjoying the suit properties and getting Rs. 3 to 4 Lakhs income per annum from the suit properties. If the receiver is appointed till effecting final decree no loss will be caused to the parties and if yield of the lands is deposited with the court the parties would get the amount as per their shares. Hence, prays to allow the IA.

4) The respondent No.1 to 3 have filed objections to IA and denied contents of the affidavit filed in support of the IA. The petitioners filed suit in OS No.94/2002 on the file of this court and pleaded that the petitioners are in possession of the suit properties. They also gave evidence stating that they are in possession of the suit properties. The petitioners have filed this IA to drag the proceedings. Hence, prays to dismiss the I.A.

5) The respondent No.4 to 7 have filed objections to IA and denied the entire contents of the affidavit filed in support of the IA. The petitioners have not disclosed share of these respondents in the petition. Hence, prays to dismiss the IA.

6) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the petitioners have made out grounds to appoint the court commissioner to take possession of the suit properties and carry out agriculture operations and collect the yields of the suit properties and deposit the same in the court?
- 2) What order?
- 7) Perused the records. Heard arguments.
- 8) My answer to the above points are as under:
  - 1) IN THE AFFIRMATIVE
  - 2) AS PER THE FINAL ORDERfor the following:

### **REASONS**

9) **POINT No.1**: The decree in RA No.206/2009 shows that the petitioners herein had filed suit before this court in OS NO.94/2002 for declaration and injunction and the said suit partly decreed. Aggrieved by the judgment and decree in that case they preferred appeal in RA NO.206/2009 on the file of the Hon'ble Prl. District Judge, Kalaburagi. Further, the decree shows that the Hon'ble Prl. District Court modified the reliefs and awarded 1/56th share to petitioners and defendants No.2 and 3. Aggrieved by the same appeal was filed before the Hon'ble High Court in RSA No.200239/2015. The Hon'ble High Court modified the decree and allotted 1/6th + 1/48th share to plaintiffs No.2 to 6

and 1/48th share to plaintiff No.1 and defendant No. 2 and 3 in the suit properties.

10) The above judgment and decree attained finality. Therefore, there is no dispute that the petitioners and respondents No.2 and 3 are entitled for share in the suit properties. It is the case of the petitioners that they are having more than 90% share in the suit properties. But the respondents are enjoying the suit properties and getting income. The respondents in their objection statement have denied the version of the petitioners and contended that the petitioner in OS No.94/2002 pleaded that they are in possession of the suit properties and also led evidence to that effect and now they are contended that these respondents are in possession of the suit properties.

11) It is to be noted that the Hon'ble High Court by its judgment drawn preliminary decree allotting shares to the petitioners and the respondents. Therefore, it is not in dispute that both the petitioners and respondents are co-owners of the suit properties and both are having rights in the suit properties and also yield from the suit properties. Therefore, if receiver is appointed to take possession of the suit lands and carry out operations with the help of labours and deposit the yield with the court, then after drawing final decree the amount shall be distributed among the petitioners and respondents as per their shares and thereby both parties will enjoy the fruits of the suit lands. Further, no loss or

hardship would be caused to none of the parties to the suit. Now harvesting season is approaching in this region, and hence it is very much necessary to appoint the receiver to distribute the fruits of the suit lands to all the parties. The suit is of the year 2002 and now we are in the year 2025 and all these years only one party is enjoying the suit properties. Therefore, if receiver is not appointed the party who is not in possession of the suit properties will loose from getting yields of the suit properties. Therefore, in my opinion the petitioners have made out prima facie case for appointment of the receiver. Hence, I answer point No.1 in the Affirmative.

12) **POINT No.2:** For the foregoing reasons, the following:

### **ORDER**

The application filed by the petitioners under Order 40 Rule 1 of CPC is hereby allowed.

Sri. N.M. Advocate is appointed as receiver to take possession of the suit lands by carry out agriculture operations in the suit lands with the help of labours and collect yields of the suit properties with the court and submit report and accounts with regard to expenditure made and the income received from the suit properties.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **16<sup>th</sup> day of August 2025**)

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