

KAMS300010612020



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 10th day of August, 2026.

FDP No.9/2020

- Petitioners:
1. Sannamanchamma, W/o Thimmanaika,
D/o Late Devanaika, Aged about 50
years, R/at Gurugalakatte Road,
Kalkunike, Hunsur.
 2. Parvathi, W/o Lakshmananaika,
D/o Late Devanaika,
Aged about 62 years,
R/at Thoreyara Street,
Ponnampete, Kasaba Hobli,
Kodagu District.
 3. Nanjamma, W/o Narasanaika,
D/o Late Devanaika,
Aged about 53 years,
R/at Bannikuppe village, Kasaba Hobli,
Hunsur Taluk.
 4. Jayamma, W/o Krishnanaika,
D/o Late Devanaika,
Aged about 51 years,
R/at Thoreyara Street,
Ponnampete, Kasaba Hobli,
Kodagu District.
 5. Savithri, W/o Marinaika,
D/o Late Devanaika, Aged about 48 years,
R/at Bannikuppe village, Kasaba Hobli,
Hunsur Taluk.

-Vs-

- Respondents:
1. Kapaninaika, S/o Late Devanaika,
Aged about 60 years,
R/at Maraduru village, Kasaba Hobli,
Hunsur Taluk.
 2. Nanjamma, W/o Late Motanaika,
D/o Late Devanaika, Aged about 66 years,
R/at Jabagere village, Gavadagere Hobli,
Hunsur Taluk.

1.	Provision under which the applications are filed	:	Under Order 41 Rule 5(2) R/w Section 151 of CPC
2.	Relief sought for	:	Seeking for stay the operation and execution of the order dated 19.06.2026
3.	The date on which the application is filed	:	25.07.2026
4.	Number of the applications	:	IA.No.III
5.	The date on which the objections are filed by different opponents	:	29.07.2026
6.	The date on which the orders passed on the said application	:	10.08.2026

ORDERS PASSED ON IA NO.III

The Learned counsel for the 1st respondent filed IA No.III under Order XLI Rule No.5(2) R/w Section 151 of CPC to stay the operation and execution of the order dated 19.06.2026 passed by this court on IA No.1 filed under Section 151 of CPC for a period of 30 days.

2. The application is supported with the affidavit of the 1st respondent wherein it is stated that, he is aged suffering from old age ailments and he is not familiar with the legal provisions and procedure and the court has allowed the application filed by the petitioners under Section 153 of CPC and he reliably learnt that the petitioners are going to execute the order. The orders needs to be questioned by filing appeal before the appellate court and due to his ill-health he could not contact his counsel and recently he contacted the counsel and asked him to get all the papers and also certified copies of the documents. Only yesterday he could hand over some of the papers and he is arranging to get the certified copies of other documents. He requires 30 days time to get the necessary certified copies of the documents and arrange to file the appeal. He has got a very good case on merits. If the application is allowed the petitioners will not be put to any hardship or inconvenience. On the other-hand if the application is not allowed he will be put to great hardship and irreparable injury. Hence, prayed to allow the application.

3. On the other-hand learned counsel for the petitioners filed the objection contending that, the application is not maintainable under law or on facts and also contended that the 1st respondent has not filed any objection to the application under Section 153 of CPC. The present application is filed with ulterior motive in order to delay the proceedings and to get wrongful gain. If the application is allowed the petitioners will be put to great hardship. It is further contented

that, the mother of the petitioners by name Kalamma filed suit in OS No.60/2006 for the relief of partition and the said suit came to be decreed and the appeal preferred by the 1st respondent in RA No.573/2011 came to be dismissed on 02.04.2012 and no second appeal has been preferred by the 1st respondent. It is further contented that, this petition is filed for drawing final decree proceedings and by filing an application under Section 153 of CPC, the petitioners have claimed their share and said application came to be allowed on 02.07.2026 declaring that the petitioners are entitled for 1/7th share. There is no mistake committed by this court in passing the orders and since 20 years the petitioners are fighting for their lawful share. Hence, prayed to dismiss the application with costs.

4. Thereafter heard arguments addressed by learned counsel for the petitioners. In spite of providing opportunity the learned counsel for the 1st respondent has not chosen to address the arguments. Perused the case papers. After hearing the arguments of petitioners' counsel and after perusal of the case papers the points that arise for consideration are as follows:

POINTS

1. Whether the 1st respondent has made out sufficient grounds to stay the operation and execution of the orders passed by this court dated 19.06.2026 on I.A.No.I?
2. What order?

5. The findings on the above points are as hereunder:

Point No.1: In the Negative

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

REASONS

6. **Point No.1:** The petitioners have filed this petition against the respondents under Order XX Rule 17 of CPC seeking for passing final decree in respect of the preliminary decree passed by this court in OS No.60/2006 which was filed for partition and separate possession and the said suit came to be decreed on 09.06.2011 declaring that the petitioners are entitled for 1/8th share in the decree schedule properties. Aggrieved by the said judgment, the 1st respondent has preferred an appeal before Hon'ble District and Sessions Court, Mysore in RA No.573/2011 which came to be dismissed on 02.04.2012 and thereafter the petitioners herein have filed this petition seeking for the relief of drawing final decree. Earlier the petitioners had filed FDP No.1/2014 which came to be dismissed for non prosecution. Thereafter this petition came to be filed. On the basis of the decision rendered by **Hon'ble Apex Court of India** in the case of **Vineetha Sharma** the petitioners have filed I.A.No.I under Section 153 of CPC to modify their share. The 1st respondent has not at all opposed the said application and further there is no second appeal preferred by the 1st respondent. By applying the principles laid down by Hon'ble Supreme Court of India in the decision reported in (2020) 9 SCC 1 Between: Vineetha Sharma Vs

Rakesh Sharma this court allowed IA No.1 filed by the petitioners under Section 153 of CPC on 19 . 06 . 2026 and directed the office to draw one more preliminary decree. On 25.07.2026 the 1st respondent came up with this application under Order XLI Rule 5(2) of CPC seeking for stay of the operation and execution of the orders passed by this court dated 19.06. 2026.

7. The application came to be opposed by the petitioners stating that there is no error committed by this court in modifying the share of the petitioners as well as the respondents and further contented that the application is filed only to drag on the proceedings. At the time of addressing the arguments learned counsel for the petitioners argued that the 1st respondent can only prefer a regular appeal against the orders passed by this court and the period of appeal is only 30 days. It is pertinent to note that in the affidavit filed in support of the application also the 1st respondent contended that, he wants to prefer an appeal. It is very important to note that this court passed the orders on IA No.1 on 19.06.2026 and this application came to be filed on 25.07.2026 which is after 30 days. Now it is necessary to go through Order XLI Rule 5(2) provides for stay of the decree by court which passed the decree. This court passed the order on an interlocutory application declaring the rights of the parties and the period of appeal is only 30 days. Furthermore, the 1st respondent in spite of filing the application has not chosen to address any arguments on the said application. It shows that the 1st

respondent has filed a bald application and he does not want to get any relief on the said application. The application is filed only to drag on the proceedings. Therefore this court comes to the conclusion that the 1st respondent has not made out any grounds for stay of the operation and execution of the orders passed by this court on I.A No.I under Section 153 of CPC. Accordingly. Point No.1 is answered in the negative.

8. **Point No.2:** In view of the aforesaid reasons, this court proceeds to pass the following:

ORDER

IA.No.III filed by the 1st respondent under Order 41 Rule 5(2) R/w Section 151 of CPC is hereby rejected with costs of Rs.500/-.

(Typed by me directly on the Laptop, same is then corrected and pronounced by me in the open court on this the 10th day of August, 2026.)

Sd/-

(Anitha)

Prl.Senior Civil Judge and JMFC.,
Hunsur.