

KAMS400015022018



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT K.R.NAGAR**

**PRESENT:** **Sri. Aravindra.B.C., B.A., L.L.B.,**  
**Senior Civil Judge & JMFC**  
**K.R.Nagar.**

Dated this the 20<sup>th</sup> day of February, 2024

**O.S./49/2018**

- 1) **Smt. Manasa @ Rajeshwari A.M.,**  
W/o Sathishkumar K.S.,  
Aged about 33 years.
- 2) **Ranaveer K.S.,**  
W/o Sathishkumar K.S.,  
Aged about 2 years.

2<sup>nd</sup> plaintiff is minor  
represented by his guardian  
mother i.e., 1<sup>st</sup> plaintiff.

Both are R/at:  
C/o Mohan,  
House No.136, Maharana  
Prathap road, 3<sup>rd</sup> Cross,  
3<sup>rd</sup> Main road,  
Hemavathi Nagar, Hassan.

**.....Plaintiffs**

(By Sri. S.N., Advocate)

**-Versus-**

- 1) **Sri. Sathish Kumar K.S.,**  
S/o Late K.S.Sannathammegowda,  
Aged about 39 years,  
Panchayath Development Officer,  
Thattakere Grama Panchayath,  
Hunsur Taluk, Mysuru District.
- 2) **Smt. S.L.Manjula,**  
W/o Late K.S.Sannathammegowda,  
Aged about 58 years,  
R/at: No.17236, Subhashanagara,  
K.R.Nagar Town and Taluk,  
Mysuru District.
- 3) **Dr. Chaithra,**  
D/o Late K.S.Sannathammegowda,  
W/o Kempu Huyilegowda,  
Aged about 38 years,  
R/at: Jayanagara, Bengaluru.

**.....Defendants**

(By Sri. H.N.S, Adv. for defendant No.1)  
(Defendant No.2 and 3 dismissed)

**Parties to I.A.No.XI**

**Applicant** : Sri.Sathishkumar  
**..... 1<sup>st</sup> defendant**

-V/s-

**Opponents** : Smt.Manasa D. and  
Another.  
**..... Plaintiffs**

Provision under which the application is filed	Under Section 10 of CPC
Relief Sought for	Seeking the relief of stay the further proceedings.
The date on which the application is filed	13.12.2023
Number of the application	IA No.XI
The date on which the objections are filed by the different opponents	19.12.2023
The date on which the orders were passed on the said application	20.02.2024

### **ORDER ON IA.No.XI**

This is an application filed by the defendant No.1/applicant Under Section 10 of Code of Civil Procedure for seeking the relief of stay the further proceedings of this case till disposal of G&W No.25/2021 on the file of Hon'ble II Addl. Senior Civil Judge and CJM, Mysuru.

2. The defendant No.1 sworn to an affidavit in support of the application, wherein he has stated that, the plaintiff No.2 who is son of defendant Nos.1 has filed this

suit against himself and his family members for the relief of partition and separate possession in respect of suit schedule properties, whereas he filed an application before Hon'ble II Addl. Senior Civil Judge and CJM, Mysuru in G&W No.25/2021 seeking custody of the plaintiff. The said application is pending for adjudication. Therefore, he prays for allow the application and stay the further proceedings of this case till disposal of above said petition.

3. On the other hand, the plaintiff has filed objection to the I.A.No.XI. In the Objection Statement, he has contended that, the application filed by the defendant No.1 is not maintainable both in law or on facts and defendant No.1 has filed the present application with intention to drag on the proceedings of this court and also harass the plaintiff.

4. Further contended that, the defendant has making several interim applications during the course of proceedings and the same was dismissed by this court.

Further, he has also filed similar application for stay the further proceedings of this case which came to be dismissed on 09.10.2023. Further contended that, there is no any reasonable grounds in the affidavit which enclosed to IA No.XI. Accordingly, he prays to reject the application.

5. Now the following points arises for consideration of this court:

***1. Whether the defendant No.1 has made out a ground to stay the further proceedings?***

***2. What order?***

6. Heard the learned counsel appeared for the plaintiff and defendant No.1 and perused the materials available on record.

7. After going through the records and hearing the parties, the above points are answered as follows:

Point No. 1 : In the **Negative**

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

## **REASONS**

8. **Point No.1:-** The plaintiff has filed the suit for the relief of partition and separate possession against the defendant No.1 and her sisters with respect to the suit schedule properties. According to plaintiff, the suit schedule properties are the ancestral and joint family properties of the plaintiff. On the other hand, the defendant No.1 taken contention that, the suit schedule properties are not the joint family properties of plaintiff and defendants, whereas the suit schedule properties are the self acquired properties of 2<sup>nd</sup> defendant and her husband Sanna Thimmegowda. Hence, the plaintiff is not entitled any relief as sought for.

9. Before appreciating the rival contentions of the parties, this court glance the provision of under Section 10 of the CPC which reads as under:

***No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a***

***previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in (India) have jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by and having like jurisdiction or before (the Supreme Court).***

***Explanation:- The pendency of a suit in a foreign Court does not preclude the Courts in <sup>1</sup>[India] from trying a suit founded on the same cause of action.***

10. On plain reading of above Section 10 of CPC which provides that, no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in having jurisdiction to grant the relief claimed.

11. In the present case on hand, the G&W No.25/2021 filed by the defendant No.2 is subsequent to filing of the present suit. Further, it could be seen that, the

applicant has not furnished pleadings in G & W no.25/2021 before this court to assertion with regard to issues in the above said case. Admittedly, the nature of the suit and G & W is totally different. In the present case on hand, the issues has raised with regard to entitlement of partition. Whereas, in G & W the points would arise only appointment of the guardian. Therefore, the issues in present suit and G & W are totally different. Therefore, the present application is not maintainable. Further, the defendant has not stated anything regarding the issue in both suits are one and the same. In this view also the present application filed the defendant is not maintainable. Accordingly the defendant No.1 has not made any reasonable grounds to allow the application. Accordingly, it needs to be rejected. With these observations, this court answered **Point No.1 is in the Negative.**

12. **Point No.2** : For the above discussion on point No.1, this court proceed to pass the following:

**ORDER**

I.A.No.XI filed by the defendant  
No.1 under Section 10 of CPC is  
rejected.

No order as to cost.

*[Dictated to the Stenographer directly on computer, corrected and  
then pronounced by me in the Open Court on this the **20<sup>th</sup> day of  
February, 2024]***

**(ARAVINDRA B.C)**  
SENIOR CIVIL JUDGE & JMFC.,  
K.R.NAGAR.