

KARN320004402009



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND
J.M.F.C., AT KANAKAPURA**

Dated: This the 18th day of July 2025

PRESENT

Smt. LATHASHREE B.V., B.A.,LL.B.,
I Addl., Civil Judge & JMFC,
Kanakapura.

O.S No.321/2009

Plaintiff : Sri. Puttaswamy Gowda
S/o Dyavegowda,
Aged about 52 years,
R/at Kadaledoddi village,
Uyyamballi Hobli, Kanakapura Taluk.

-Vs-

Defendants 1. Sri. Anthonappa
Since dead by his Lrs.,
2. Smt. Amruthamma
W/o Anthonappa,
Aged about 65 years,
3. Smt. A.Mary Suma
D/o Anthonappa,
Aged about 32 years,
4. Smt. A.Mary Roopa
D/o Anthonappa,
Aged about 30 years,

All are R/at Kadaledoddi village,
Uyyamballi Hobli, Nallahalli Dhakle,
Kanakapura Taluk.

5. Sri. Anthony Raju
S/o Late. Anthonappa,
Aged about 39 years,
R/at Anthony Doddi,
Harobele Post, Uyyamballi Hobli,
Kanakapura Taluk.

INTERLOCUTORY APPLICATION No.5

Defendant No.5/ : Sri. Anthony Raj
Applicant

(D.5 Sri. R.C., Adv.)

-Vs-

Plaintiff/ : Sri. Puttaswamy Gowda
Opponent

(By Sri. S.D., Adv.)

- 1 Provision under which : U/s 10 of C.P.C.
the applications are filed
- 2 Relief Sought for : Stay
- 3 The date on which the : 20.04.2022
application is filed
- 4 Number of the : One
application
- 5 The date on which the
objection is filed by : 13.09.2022
different opponents
- 6 The date on which the
common orders were : 18.07.2025
passed on the said
application

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.

ORDERS ON INTERLOCUTORY APPLICATION No.5
FILED BY THE DEFENDANT NO.5
UNDER SECTION 10 OF CPC

The defendant No.5 in the present matter has filed Interlocutory Application No.5 under Section 10 of CPC praying this court to stay the above case until disposal of the suit in O.S No.19/2010 which is pending before this court in the interest of justice and equity.

2. In the annexed affidavit to I.A No.5, the defendant No.5 has submitted that, earlier the plaintiff has filed the present suit against defendant No.1 to 4 for the relief of specific performance of contract and during the pendency of the said suit defendant No.5 has been impleaded and he is the only contesting defendant in the said case. It is also submitted that, the plaintiff and defendant No.1 to 4 have colluded with each other and filed the present false suit. Hence, he got impleaded by filing necessary application as defendant No.5.

3. It is further submitted that, the defendant No.1 and 2 have executed a registered sale agreement to defendant No.5 on 15.07.2009 with respect to Sy.No.311/1 to an extent of 1 acre 5 guntas but did not come forward to execute or perform their part of contract. Hence, he filed a suit in O.S No.19/2010 for the relief of Specific performance of contract wherein the defendant No.1 and 2 in the present matter have filed written statement in that matter and the court has framed issues. Further, the PW.1 to 3 have also been examined

but not cross-examined by the defendants and the case was decreed on 15.03.2017 and execution petition was also filed before this court as on 20.07.2017 and notice was issued to Judgment Debtor in Execution No.22/2017 and the counsel for plaintiff in the present suit has appeared for defendant No.1 to 4 in execution. However, the judgment and decree in O.S No.19/2010 was questioned by defendants through regular appeal in R.A No.40/2018 before Hon'ble Senior Civil Judge and JMFC, Kanakapura which came to be transferred and forwarded to Hon'ble II Addl., District and Sessions Judge, Ramanagara to sit at Kanakapura with a new number given as R.A 5145/2019 and the same came to be disposed on 04.02.2021 and even the said appeal was represented by the college of Advocate Sri. S.D by name advocate Sri. R.G.K., for practicing together. Hence, these things so that the plaintiffs and defendant No.1 to 4 are collusively contesting the case.

4. Further, as per the order of Hon'ble II Addl., District and Sessions Judge, Ramanagara to sit at Kanakapura in R.A 5145/2019, the said O.S No.19/2010 was remanded back to the Trial Court and matter is pending for consideration and the Advocate Sri. S.D., who is representing the defendant no.1 and 2 in O.S No.19/2010 has paid the costs to the said defendant No.5 who is the plaintiff therein and goes to submit that, all these aspects clearly shows that, the present plaintiff and his counsel as well as the defendant No.1 to 4 and their counsel have colluded with each other.

5. It is further submitted that, the said defendant No.1 in the present matter is having only 1 acre 5 guntas in Sy.No.311/1 and the said defendant No.1 and 2 executed registered sale agreement to defendant No.5 on 15.07.2009 and they have not retained any land in suit Sy.No.311/1 but the said defendant No.1 to 4 in the present matter have executed registered sale agreement with respect to Sy. No.311/1 to an extent of 36 guntas on 07.11.2009 to the plaintiff. Even though the said defendant No.1 is not having any property in a suit Sy.No.311/1, they have executed such an agreement which shows the same is made to get unlawful gain. Hence, with the said contentions prays to allow the said application.

6. The gist of the objection averments filed by the plaintiff is as under:

It is submitted by the plaintiff is that, application filed by the defendant is not maintainable either in law or on facts and the same is liable to be rejected. It is also submitted that, the present application is filed with malafide intention and the provisions U/s 10 of CPC is not applicable based upon the averments raised by the defendant No.5 and has denied the entire contentions raised by the defendant No.5 in the affidavit to I.A No.5. It is further contended that, the suit of O.S No.19/2010 is filed by defendant No.5 colluding with defendant No.1 and 2 and they have created and concocted the said alleged agreement of sale to defeat and deprive the right

of plaintiffs in the present matter with respect to schedule properties. It is further submitted that, the defendant No.1 to 4 have executed an agreement of sale in favour of plaintiff with respect to schedule property during the year 2006 but after execution of the same, the defendants colluding with each other have created a false sale agreement on 15.07.2009 in the name of defendant No.5 and the sale agreement of the plaintiff is dated 27.03.2006 which is much earlier to the sale agreement of defendant No.5 herein. Hence, Sec.10 of CPC does not apply to the present matter on hand and also the present suit is not the subsequent suit and the plaintiff is not the party in O.S No.19/2010. Hence, prays to reject the application.

7. Heard both the sides.

8. The following points arise for the consideration by this court is as under:

1. Whether the interlocutory application No.5 filed under section 10 of C.P.C. by the defendant No.5 deserves to be allowed?

2. What Order?

9. Upon hearing of the arguments and on perusal of documentary evidence available on record, the findings of this court to the above points are as under:

Point No.1 :	In the Negative;
Point No.2 :	As per final order for the following:

REASONS

10. Before proceeding with the facts, it is just and necessary to discuss certain points relating to the ingredients of Sec.10 of CPC and the said provision reads as under:-

Section 10 of the Code of Civil Procedure (CPC) deals with the concept of "Res Subjudice," which means a matter is already under judicial consideration. It prevents a court from proceeding with the trial of a suit when a previously instituted suit between the same parties, on the same subject matter, and under the same title, is pending before a competent court. This ensures judicial efficiency and prevents conflicting decisions on the same issue.

11. **Point No.1:** On perusal of the materials on record, at this stage of the case, it is to be noted that the suit is of the year 2009. Even before dwelling into the facts and circumstances narrated by the defendant No.5 through the said application it is just and necessary to note that, the core function of Sec.10 is to halt the Trial of a subsequent suit when a similar suit is already pending and the matter in issue must be directly and substantially the same in both the previously instituted suit and the subsequent suit and the parties in both suit

must be the same. Hence, in the present matter, it is very much evident that, the present suit is of the year 2009 and the suit which the defendant No.5 is pressing through the said application is of the year 2010. Hence, the present suit is not the subsequent suit for considering the contention raised by the defendant No.5. Further another essential aspect of Sec.10 of CPC is that, the suit pending as well as the subsequent suit must relate to the same parties. However, as per the materials on record the present plaintiff is not the party in O.S No.19/2010 and even on the said ground the contention of defendant No.5 through the said application cannot be considered.

12. Hence, as already observed above the prime ingredients of Sec.10 of CPC has not been met out by the defendant No.5 in order to consider the other averments placed by him through the said application. Further, regarding the suit been collusive etc., the said averments is however a subject matter of trial and the same cannot be taken for consideration or adjudication at this stage while ascertaining the present application in pursuance to Sec.10 of CPC.

13. Hence, as the said present suit is not the subsequent suit to the O.S No.19/2010, staying the further proceedings of the present suit will not arise at all. Hence, on the said ground itself it could be clearly stated that the present application filed by the defendant No.5 does not deserves to be allowed. Hence, with the said observations, ***this court answered Point No.1 in the Negative.***

14. **Point No.2:** In view of above made observations on Point No.1, this court proceeds to pass the following:

ORDER

The Interlocutory Application No.5 filed
by the defendant No.5 U/s 10 of CPC is
hereby dismissed.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on 18th day of July 2025)

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.