

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT CHIKKANAYAKANAHALLI.**

**Present:- Sri. SATISH S.T., B.Com., LL.B.,
Senior Civil Judge and J.M.F.C.,
Chikkanayakanahalli.**

Dated :- This the 25th day of July, 2026

FDP.No.01/2022

<u>PETITIONER:</u> C.K.Jayaram	
<u>V/S</u>	
<u>RESPONDENTS:</u>	Saraswathi & Others
<u>PARTIES IN IA.No.06</u>	
<u>APPLICANT:</u>	C.V.Puttaiah & Others
<u>V/S</u>	
<u>OPPONENT:</u> C.K.Jayaram	

PREAMBLE OF IA.No.06

Provision under which the application is filed	U/S 10 R/w Sec.151 of CPC
Relief sought for	For stay
The date on which the application if filed	06.11.2025
Number of the application	06
The date on which the objections are filed by different opponents	16.04.2026
The date on which the orders were passed on the said application	25.07.2026

ORDERS ON IA.No.06

The applicants/respondent No.5 to 7 have filed this application under Section 10 R/w Section 151 of CPC., praying to stay the operation and execution of further proceedings of this case in view of pending of RFA.No.2044/2018 before the Hon'ble High Court of Karnataka in the interest of justice.

The Brief facts of the affidavit filed by applicant in support of petition are as follows:-

3. That the petitioner is the 5th respondent and he is the authorized by respondent No.6 and 7 to swear this affidavit on behalf of them also and they are his brothers. He know the fact and circumstance of the above case proceedings through respondent No.1 to 4 and petitioner, hence the annexed application. The 1st respondent's deceased husband Srinivas S/o Late Venkataramaiah and they are the uterine brothers, he died during the pendency of OS.No.01/2018, his wife and children are brought on record and made them respondent No.1 to 4 in the above proceedings. He has filed detailed objections with documents at the time of hearing their impleading application by this Court and same may kindly read as part and parcel of this affidavit to avoid repetition. Their deceased brother Srinivas S/o Late Venkataramaiah against him the petitioner has filed OS.No.01/2018 before this Court for recovery of money which was filed on 02.01.2018 with respect to undivided Hindu joint family properties under the guise that our deceased brother Srinivas S/o Late Venkataramaiah executed the registered mortgage deed in favour of petitioner on 23.01.2016 raised loan of Rs.5,00,000/- for the said alleged mortgage deed neither of them or executants, signatories or consenting witnesses. However, this fact is very much in the knowledge of their deceased brother Srinivas S/o Late Venkataramaiah, much more the properties shown in the registered mortgage deed

are not self-acquired properties of their deceased brother Srinivasa.

Further the applicants and their deceased mother Venkataramaiah has filed suit for partition by metes and bounds of certain properties shown in the created, alleged, cooked up registered mortgage deed, which was filed 21.06.2014 before this Court for granting of 1/5th share each on suit items, in the said suit their deceased brother Srinivas S/o Late Venkataramaiah has hotly contested the partition suit before this Court in OS.No.11/2014, after contest suit was decreed by granting 1/4th share each of them in suit item No.2 of 'A' schedule property and 1/5th share on item No.3 of 'A' schedule property and suit item No.1 to 6 of 'B' schedule property by metes and bounds, the copy of the judgment and decree dated 02.08.2017 in OS.No.11/2014 already produced for kind perusal of this Court.

Further the applicants being aggrieved by the said judgment and decree dated 02.08.2017 in OS.No.11/2014 passed by this Court has preferred RFA.No.2044/2018 before the Hon'ble High Court of Karnataka, same is pending for consideration, certified copy of the entire order sheet, appeal memo in RFA.No.2044/2018 are already produced for kind perusal of this Court. The deceased Srinivas also filed RFA.No.1898/2017 the same has been dismissed for non-prosecution on 17.02.2021, copy of the case status was down loaded their counsel computer on 08.05.2024 the same is produced for kind perusal of this

Court. The properties shown in the above proceedings and properties shown in OS.No.11/2018 are almost one and the same, hence the annexed application. After death of their mother $1/5^{\text{th}}$ share enlarged to $1/4^{\text{th}}$ share. Their deceased brother is not the absolute owner of the mortgaged properties, they are all having equal right, title and sharers to the properties, that their deceased brother not only played fraud to them to this Court, thus in this view of the matter the annexed application is filed, they have good case on merits and our share decided by this Court cannot purchased by petitioner in the above proceedings and the petitioner is totally stranger to them and their shares part. There is no delay in filing the application, if any delay kindly condones the same. If the application is allowed either party will not be put to any hardship of injury, on the other hand the application is rejected they will be put to great hardship and irreparable injury which may not compensated in terms of money. That the deceased brother's son is got appointment on compassionate grounds as the Srinivas was an Government employee, his son is also one of respondent getting handful salary from Government, to substantiate that they have produced voluminous documents before this Court and much their deceased brother got death benefits, retirement benefits from his employer, same is in the hands of the respondent No.1 to 4, however the petitioner is having every right to attach the salary of their deceased brother's son in the above proceedings and can appropriate the decretal amount easily for that applicants have no

objections. By this submission they prayed to allow this application.

4. The opponent/petitioner has filed objections to this application.

The brief facts of the objections filed by the petitioner to this application are as follows:-

5. That there is no valid grounds have been made in the application to stay the operation and execution of further proceedings of FDP in view of pendency of RFA.No.2044/2018 and the pendency of RFA is not a bar to proceed with the final decree proceedings. The application has been filed in order to delay the disposal of FDP and to drag the proceedings this untenable application has been filed. The respondent No.5 to 7 are not parties to the mortgage deed. The respondent No.5 to 7 have filed application under Order 1 Rule 10 (2) of CPC., and requested to implead them as parties to the above FDP proceedings. The respondent No.5 to 7 at the time of arguments of their impleading application have filed another application, under Order 13 Rule 1 and 2 R/w Section 151 of CPC along with documents. The document discloses that the respondent No.4 is working as a Teacher and getting the salary. The respondent No.5 to 7 have stated in their objections at Para No.9, that the respondent No.4 has obtained the compassionate employment and working as Second Division Clerk, in Sri Veerabhadraswamy High School, at J.Hosahalli, Gubbi Taluk, Tumkur District and getting handful salary, the petitioner can recover his

amount by attachment of respondent No.4's salary, this stage is only after the final decree proceedings not much earlier to final decree. The filing of execution petition and attachment of salary is a subsequent proceedings, after getting the final decree, but the respondent No.5 to 7 have impleaded in the final decree proceedings instead of Execution petition, the application is a premature one as such the application is not maintainable one. The Section 10 of the Civil Procedure Code relates to the stay of suit (res sub judice) is generally not applicable to final decree proceedings. The above FDP proceedings is a continuation of the suit and not a separate suit within the meaning of Section 10 of CPC. The Section 10 of CPC requires the "Previously Instituted Suit" to be pending where as FDP is the culmination of the preliminary decree. The section 10 of CPC applies to a suit in a Civil Court and the FDP is an application to implement a previous decree not a suit. The respondent No.5 to 7 has filed this untenable application at the instigation of respondent No.1 to 4. This is a collusive application filed by the respondents to protract the FDP Proceedings. In case if the respondent No.5 to 7 have aggrieved, they have to file necessary application at the time of Execution Proceedings. This application has been filed to avoid the recovery of money from the respondent No.1 to 4. If the application is allowed, the petitioner will be put to irreparable loss and injury. If the application is dismissed no hardship would be caused to the respondent No 5 to 7. The application is misconceived and not maintainable one.

By this submission they prayed for dismiss the application filed by the petitioner.

6. I have heard arguments on both sides.

7. Perused the applications, objection and case papers.

8. To decide this petition following points are arises for my consideration;

P O I N T S

1) Whether applicants/respondent No.5 to 7 have made out sufficient grounds to stay the further proceedings of this case ?

2) What order ?

9. My answer to the above points are as follows;

Point No.1 : In the Affirmative

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

R E A S O N S

10. **Point No.1:-** This final decree proceedings has filed as per the preliminary decree passed in OS.No.01/2018 dated 04.07.2022. The respondent No.5 to 7 have produced the copy of plaint in OS.No.11/2014 and copy of preliminary decree in that suit which was passed on 02.08.2017, on perusal of this documents it goes to shows that there was another partition suit between respondent No.1 to 6 and deceased Srinivas who is the husband of 2nd respondent and respondent No.5 to 7 are the uterine brothers. Further the suit properties which was stated in the OS.No.11/2014 and petition schedule properties of this petition included in the both suits. The respondent No.5 to 7 have also produced copy of RFA.No.2144/2018 which was pending before

Hon'ble High Court of Karnataka in OS.No.11/2014. From this it can be held that some of the properties which are stated in this petition are also adjudicated in RFA.No.2044/2018. If both the cases are tried it may possible to come conflict of judgment. The OS.No.11/2014 has filed by the respondent No.5 to 7 is earlier suit, the RFA.No.2044/2018 is pending before the Hon'ble High Court of Karnataka, when that case was pending before the Hon'ble High Court of Karnataka this Court being the subordinate Court is not necessary to adjudicate the petition schedule properties till disposal of RFA.No.2044/2014. The learned Advocate for petitioners has vehemently argued that, though the another proceedings is pending before the Hon'ble High Court of Karnataka this final decree proceedings is adjudicated as per the preliminary decree in OS.No.01/2018. The Section 10 of CPC., is not applicable to FDP proceedings. The contention of learned Advocate for petitioners is not acceptable one, because the final decree proceedings is continuing proceedings of original suit, there is a one proceeding is pending of respondent No.5 to 7 before the Hon'ble High Court with respect of some of the petition schedule properties. Hence it is just and necessary to stay the further proceedings of this case till disposal of RFA.No.2044/2014. Hence, holding that the respondent No.5 to 7 have made out sufficient grounds to stay the further proceedings of this case. **Hence, I have answered Point No.1 in the Affirmative.**

11. **Point No.2:-** In view of various reasons and discussions made on Point No.1, I proceed to pass the following;

ORDER

The IA.No.6 filed by the applicants/respondent No.5 to 7 under Section 10 R/w Section 151 of CPC., is thereby allowed.

The further proceedings of this case is hereby stayed till disposal of RFA.No.2044/2014.

No order as to cost.

(Dictated to the Stenographer, typed by him and corrected, signed and then pronounced by me in the Open Court on this the 25th day of July, 2026).

(SATISH S.T.)

Senior Civil Judge & J.M.F.C.,
C.N Halli.

ORDER PRONOUNCED IN THE OPEN
COURT VIDE SEPARATE ORDER

Senior Civil Judge & J.M.F.C.,
C.N Halli.