

KAVP500032772023



Presented on : 02-09-2023
Registered on : 08-09-2023
Decided on : 08-10-2025
Duration: 02-Yrs, 02-months, 01-days.

**IN THE COURT OF HON'BLE ADDL. SENIOR CIVIL
JUDGE AND JMFC, SINDAGI
AT: SINDAGI.**

Present – Shri. Abdul Rahiman .A. Mulla
B.A.L.,LL.B.(Hon's)
**Addl. Sr. Civil Judge & JMFC,
Sindagi.**

Dated 8th day of October, 2025
O.S.NO.103/2023

Plaintiff/s :

- Kallamma @ Kallawwa**
W/o Late Gollappa D/o Late Revappa
Age 70 Years Occ. Household
R/o Vastari Taluk Yadrami
District : KALABURAGI.

(R/by B.S.K., Adv.,)

// Versus //

Defendant/s :

- Siddappa**
S/o Late Revappa Indi
Age 75 Yrs. Occ. Agriculture
R/o Kakalmeri Taluk Sindagi

2. **Guruballappa @ Gurulingappa
@ Gurappa S/o Revappa Kakkalameli**
Age 73 yrs. Occ. Agriculture
R/o Kakalmeri Taluk Sindagi
District VIJAYAPURA
 3. **Sunanda
D/o Gurappa & W/o Malkanna**
Aged about 41 Years Occ. Household
R/o Ballaundagi Post Ballundagi
Jewargi Taluk, Kalaburagi District.
 4. **Revappa
S/o Gurubalappa**
Age 39 Yrs. Occ. Agriculture R/o Kallur 'K'
Tq, Jewargi Kalaburagi District.
 5. **Sridevi
W/o Late Dharamaraya**
Age 45 Yrs. Occ. Household
R/o Kallur 'B' Post Kallur 'K'
Tq, Jewargi Kalaburagi District.
 6. **Chaitaniya
D/o Late Dharamaraya**
Age 21 Yrs. Occ. Student R/o Kallur 'B' Post
Kallur 'K' Tq, Jewargi Kalaburagi District.
 7. **Renuka
D/o Late Dharamaraya**
Age 19 Yrs. Occ. Student R/o Kallur 'B' Post
Kallur 'K' Tq, Jewargi Kalaburagi District.
- (Def No.1 dead
(Def.No.5 to 7 Sri. M.B.N., Adv.),
(Def.No.3 ex-parte)**

PARTIES IN I.A.No.I**Applicant/Plaintiff:**

- Kallamma @ Kallawwa**
W/o Late Gollappa D/o Late Revappa

V/s.**Opponent/Defendant:**

- Siddappa**
S/o Late Revappa Indi and others

1.	Provision under which the application is filed	U/o.39 Rule 1 and 2 of CPC
2.	Relief sought for	To restrain defendant No.1 to 3 from perusing the preliminary decree passed in O.S.No.108/2019 dated 04.04.2022.
3.	The date on which application is filed	01-08-2023
4.	Number of the application	I.A.No.I
5.	The date on which objections/written statement are filed by different opponents	20-02-2024
6.	The date on which orders were passed on said application	08.10.2025

:-ORDERS ON I.A.No.I FILED BY PLAINTIFF**U/O.39 RULE 1 AND 2 OF CPC :-**

- The present suit is filed by plaintiff against defendants for the relief of declaration and

partition and separate possession and along with suit, the present application is filed by plaintiff praying this court to restrain defendant No.1 to 3 from perusing the preliminary decree passed in O.S.No.108/2019 dated 04.04.2022.

2. In the affidavit annexed to the application, plaintiff averred that, she has filed this suit against defendants for the relief of partition and separate possession and declaration contending that, suit schedule properties are ancestral joint family properties of plaintiff along with defendant No.1 and 2 and she has got 1/3rd share in suit schedule properties. When plaintiff requested defendant No.1 and 2 to allot her share, she came to know that, defendant No.1 to 3 colluding with each other have got passed judgment in O.S.No.108/2019 and since plaintiff is not a party to said suit, said judgment is not binding on her. Now defendant No.3 has filed FDP No.7/2022 on the file on Civil Judge and JMFC,

Jewaragi and court commissioner has filed his report. If temporary injunction as prayed by plaintiff is not granted, irreparable loss and injury will be caused to plaintiff and amongst these grounds, prayed to allow the application.

3. After issuance of summons, defendant No.1 was reported to be dead, defendant No.3 remained ex-parte, whereas defendant No.2, 5 to 7 appeared through their respective counsels. Defendant No.2 filed written statement denying the plaint averments and contended that, allegation made in the plaint are baseless. That lands bearing R.S.No.67/2A and R.S.No.67/2B are belonging to defendant No.2, which was purchased in the name of defendant No.5. This suit is filed at the instigation of defendant No.5 to take revenge. Another suit in O.S.No.5/2019 was filed by defendant No.2 of this case as plaintiff and another suit was filed in O.S.No.108/2019 by daughter of defendant No.2 against her father i.e., present

defendant No.3. Said suit was decreed and FDP No.7/2022 is pending on the file of Civil Judge and JMFC, Jewaragi and amongst these grounds prayed to dismiss the application.

4. Heard. Perused the records.

5. The points that arise for my consideration is as under:

- 1) Whether prima-facie case and balance of convenience lies in favour of plaintiff?
- 2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same?
- 3) What order?

6. My findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : To defendant No.1 to 3 in case of granting temporary injunction.

Point No.3 : As per final order
for the following:

:REASONS:

7. **POINT NO.1 AND 2:** As both these points are interlinked with each other, they are taken together for discussion to avoid repetition of facts.

8. It is specific case of plaintiff that, she has got her legitimate share in suit schedule properties and defendant No.1 to 3 colluding together got filed suit in O.S.No.108/2019 and now FDP No.7/2022 is pending.

9. In support of her contention, plaintiff produced in all 28 documents i.e., certified copy of plaint, written statement, judgment and decree passed in O.S.No.108/2019, certified copy of order sheet in FDP No.7/2022 and RTC extracts of suit schedule properties.

10. On the contrary, defendant No.2 contended that, land bearing R.S.No.67/2A and R.S.No.67/2B belongs to him, which was purchased in the name of defendant No.5. In support of his contention, defendant No.2 produced certified copy of order sheet and petition copy of FDP No.7/2022 and certified copy of order sheet and plaint in O.S.No.5/2019.

11. Prima facie on perusal of pleadings and documents produced by both parties, present plaintiff is not a party to suit in O.S.No.108/2019 and prayer sought in the application is very interesting. It is prayed to restrain defendant No.1 to 3 to peruse preliminary decree passed in O.S.No.108/2019 dated 04.04.2022. Prima facie no one can be prevented from perusing the preliminary decree. As such, whether present plaintiff is necessary party to FDP proceedings, inquiry is required.

12. Prima facie at this stage of the case, how plaintiff is related to original propositus Revappa is to be decided, for which application in hand needs to be disposed. The same requires full fledged evidence and trial and same cannot be adjudicated at this stage of the case by holding mini trial.

13. In order to grant an order of temporary injunction three essential ingredients have to be fulfilled i.e., prima facie case, balance of convenience and irreparable loss and injury. In this case, plaintiff has failed to show her prima facie case and balance of convenience does not lie in her favour. If temporary injunction as prayed by plaintiff is granted, irreparable loss and injury would be caused to defendant No.1 to 3 rather than plaintiff. Hence, for the above said reasons, I answer Point No.1 in the **“Negative”** and Point No.2 as “irreparable loss and injury would be caused to defendant No.1 to 3 in case of granting temporary injunction”.

14. **Point No.3:** For the reasonings and findings given to Point No.1 and 2, I proceed to pass following:

:ORDER:

I.A.No.I filed by plaintiff U/o.39 Rule 1 and 2 of CPC is hereby rejected.

The interim exparte temporary injunction order dated 11.09.2023 stands vacated.

(Dictated to the stenographer directly on computer, typed by her, corrected, signed by me and then pronounced in open court on 8th day of October, 2025).

**(Abdul Rahiman .A. Mulla)
Addl. Sr. Civil Judge & JMFC,
Sindagi.**