

**IN THE COURT OF THE ADDL.CIVIL JUDGE AND JMFC.,****SIRA.**

Present: **Kum. Sharmila E.J.** BA LL.B, LL.M.,
Addl. Civil Judge & JMFC., Sira

Dated this the **9th** day of **March 2026**

Original Suit.No.440/2022

Plaintiffs : Smt.S.N.Susheela and another

(By Sri.J.A., Advocate)

-V/S-

Defendants : Sri.T.Dasappa and others

(By Sri.H.N., Advocate)

I.A. No.2

Applicant : Sri.T.Dasappa (Defendant No.1)

-V/s-

Opponents : Smt.S.N.Susheela and another (Plaintiffs)

i	<i>Provision under which the application is filed</i>	<i>Under Sec.10 of CPC</i>
ii	<i>Relief sought for</i>	<i>Stay of suit</i>
iii	<i>The date on which the application is filed</i>	<i>14.10.2022</i>
iv	<i>Number of the application</i>	<i>IA.No.2</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>10.11.2022</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>09.03.2026</i>



**ORDER ON IA No.2 FILED BY THE DEFENDANT No.1 UNDER
SEC.10 OF CPC**

The defendant No.1 has filed the present application under Section 10 of the Code of Civil Procedure, praying to stay the present suit on the ground of pendency of an earlier suit in O.S.No.62/2022, involving the same subject matter, before the Court of the Hon'ble Senior Civil Judge, Sira.

2. The reasons ventilated by the defendant No.1 in the affidavit annexed to the application are that the present suit has been filed subsequent to O.S.No.62/2022, which is still pending adjudication. It is contended that the said suit has been filed by the defendant against G. Lakshminarayana and others seeking the relief of partition and separate possession in respect of the suit schedule properties. It is further contended that G. Lakshminarayana, who is the husband of plaintiff No.1 and father of plaintiff No.2 in the present suit, is arrayed as defendant No.29 in O.S.No.62/2022, and the present plaintiffs are claiming the suit schedule properties through the said Lakshminarayana. The defendant further contends that the suit schedule properties are ancestral joint family properties of the parties and other coparceners and that they are in joint possession and enjoyment of the same. It is also alleged that Lakshminarayana and his father H.R. Govindappa have created certain revenue records in respect of the suit properties. According to the defendant, his deceased father Thimmadasappa had a 1/4th share in the suit schedule properties. It is further stated that, on coming to know about the alleged illegal and fabricated revenue documents, the defendant



has preferred RRT Appeal Nos.193/2021-22 and 197/2021-22 before the Assistant Commissioner, Madhugiri, and RRT No.78/2022-23 before the Tahsildar, Sira, which are still pending consideration. On these grounds, the defendant contends that the parties and subject matter involved in the present suit and O.S.No.62/2022 are one and the same, and therefore the present proceedings are liable to be stayed under Section 10 of the Code of Civil Procedure until disposal of the earlier suit.

3. On the other hand, the plaintiffs have filed their objections contending that the application is not maintainable either in law or on facts and is liable to be dismissed in limine as it lacks bona fides. The plaintiffs further contend that the defendant has sworn to a false affidavit in support of the application. It is further contended that the plaintiffs, are in lawful and peaceful possession and enjoyment of the suit schedule properties having acquired the same by inheritance from late G. Lakshminarayana, the husband of plaintiff No.1 and father of plaintiff No.2. According to the plaintiffs, the revenue records continue in the name of the said Lakshminarayana and they have been paying land revenue regularly. The plaintiffs further contend that the suit schedule properties were allotted to the share of the said G. Lakshminarayana under a registered partition and after his death the plaintiffs succeeded to the properties by inheritance and are in possession and enjoyment of the same. It is also contended that the plaintiffs have developed the suit schedule properties by digging a borewell, installing a pump set and raising coconut and areca nut trees. The plaintiffs further contend that the defendants and their brothers had already partitioned their share



under a registered partition deed dated 09-10-1994 and that defendant No.1 has also sold his share under a registered sale deed dated 12-10-2009. According to the plaintiffs, the defendant has suppressed these material facts and filed the present application. It is also contended that the cause of action in the present suit for permanent injunction is entirely different from the cause of action in O.S.No.62/2022 filed for partition and therefore the provisions of Section 10 of the Code of Civil Procedure are not applicable. On these grounds, the plaintiffs have prayed for rejection of the application.

4. After going through the application along with the affidavit and the objections filed by the plaintiffs, the following points arise for the consideration of this Court:

1. Whether the defendant No.1 has made out a prima facie case to stay the present suit under Section 10 of the Code of Civil Procedure on the ground of pendency of O.S.No.62/2022 before the Hon'ble Senior Civil Judge, Sira?
2. Whether the subject matter and issues involved in both suits are directly and substantially the same so as to attract the provisions of Section 10 of the Code of Civil Procedure?
3. What order?

5. The findings of this court to the above points are as follows:

Point No.1: In the Negative

Point No.2: In the Negative

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



REASONS

6. Points No.1 and 2: Since both these points are interlinked, they are taken up together for common discussion to avoid repetition.

7. The present suit has been filed by the plaintiffs seeking the relief of permanent injunction restraining the defendants from interfering with their alleged peaceful possession and enjoyment of the suit schedule properties. It is not in dispute that the defendants have instituted O.S.No.62/2022 on the file of the Hon'ble Senior Civil Judge and JMFC, Sira, seeking partition and separate possession including suit schedule properties along with other properties. The contention of the defendant No.1 is that since the property and parties are common and both suits are between the same parties litigating under the same title, the present suit is hit by Section 10 of the Code of Civil Procedure and liable to be stayed. On the other hand, the plaintiff contends that although the property and parties may overlap, the nature of the suits, reliefs sought, and issues involved are distinct. The earlier suit is for partition and separate possession, whereas the present suit is for permanent injunction.

8. As per Section 10 of the Code of Civil Procedure, 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 claim, litigating under the same title, where such suit is pending in the same or any other



court in India having jurisdiction to grant the relief claimed. The fundamental test for applicability of Section 10 of the Code of Civil Procedure is whether the decision in the previously instituted suit would operate as res judicata in the subsequent suit. In other words, Section 10 is intended to prevent multiplicity of litigation and conflicting decisions between the same parties in respect of the same matter. The principles underlying Section 10 of the Code of Civil Procedure can be summarized as follows:

- 1. Identity of issues: The matter in issue in the subsequent suit must be directly and substantially in issue in the previously instituted suit.*
- 2. Competent court: The prior suit must be pending in the same court or in any other court in India having jurisdiction to grant the relief claimed in the subsequent suit.*
- 3. Jurisdiction to grant relief: The court in which the previously instituted suit is pending must be of competent jurisdiction to grant the relief claimed in the subsequent suit.*

Applying these principles to the present case, it is evident that though O.S.No.62/2022 is admittedly pending before the Hon'ble Senior Civil Judge and JMFC, Sira, the nature of the relief sought therein is partition and separate possession of the alleged joint family properties. In contrast, the present suit filed by the plaintiffs is for the relief of permanent injunction to protect their alleged possession over the suit schedule properties.

9. It is a settled principle of law that in a suit for permanent injunction, the primary question to be examined by the Court is whether



the plaintiffs are in lawful and peaceful possession of the suit schedule properties and whether there is interference by the defendants. Whereas in a partition suit, shares of the parties in the joint family properties are determined. Therefore, the scope and nature of enquiry in both the suits are distinct. Even though the suit schedule properties may be included in both the suits and the parties may be related, it cannot be said that the matter in issue in the present suit is directly and substantially in issue in the previously instituted suit. Further, the decision in O.S.No.62/2022 would not operate as res judicata for deciding the issue involved in the present suit for injunction at this stage. Hence, the essential ingredients required for invoking Section 10 of the Code of Civil Procedure are not satisfied in the present suit. In view of the above discussion, this Court answers **Point Nos.1 and 2 in the Negative.**

10. Point No.3: For the reasons discussed above, this court proceeds to pass the following:

ORDER

The IA.No.2 filed by defendant No.1 under Section 10 of CPC, seeking to stay the present suit, is hereby dismissed.

No order as to costs.

(Dictation given to the Stenographer, transcribed and computerised by him, then corrected, print out taken, signed by me and pronounced in the open court on this the **9th** day of **March 2026**).

Sd/-
(**Sharmila E.J.**)
Addl. Civil Judge & JMFC.,
Sira.