

KABG040019952016



ORDERS ON MEMO

The counsel for respondent No.1 has filed a memo stating that respondent No.1 had filed O.S.No.559/2010 for partition and separate possession in respect of suit property i.e. house property and its backyard bearing CTS No.4388, situated at Chavat Galli, Belagavi. It is further stated that the said suit was decreed on 13.04.2016 awarding 7/18th share to respondent No.1 and accordingly preliminary decree was drawn. In consonance with the same, the defendant No.3, 10 and 11 have filed this petition for final decree proceedings. Therefore, it is prayed that the legitimate 7/18th share in the suit property of the plaintiff be carved out by demarcation at the time of carving out of the share of the petitioners. Hence this memo.

2. The counsel for petitioners has filed objections to the memo contending that memo filed by the respondent No.1 is false and not tenable under the law and liable to be dismissed. It is submitted that respondent No.1 had filed a suit bearing O.S.No.559/2010 and it was decreed by awarding 7/18th share in the suit property. The present petition is filed by the petitioners who are the defendants in the original suit. Though there is decree in favour of respondent No.1, he has not chose to file the final decree proceedings as per decree. Further stated that the respondent No.1 has not filed his written statement or say either admitting the claim of the petitioners

or denying the same. The respondent No.1 has not made his stand clear about the decree passed in O.S.No.559/2010. The respondent No.1 cannot file the memo to carve out his share of portion of property, without seeking the permission claiming to pass the final decree in respect to his portion of property. The respondent No.1 has not followed the procedure contemplated under provision of civil procedure code. There is no provision under the law to carve out the share of law the respondent No.1 unless he applied to do so by filing proper application to that effect.

3. The respondent No.1 has not mentioned to the fact that why the final decree proceedings are not initiated by him as per the preliminary decree. The respondent No.1 by filing such memo one after another intends to cause loss to petitioners and thereby he is putting hurdles in proceedings of final decree. Hence prayed to dismiss the memo with costs.

4. Perused the materials available on record. It is clear that the present respondent No.1 had filed O.S.No.559/2012 against the present petitioners and others seeking for the relief of partition and separate possession and the said suit was decreed and he was allotted with 7/18th share in the suit property. Till date there is no challenge against the decree passed in the above said suit. Further in a partition suit, all plaintiffs are defendants and all defendants are plaintiffs. Since the final decree proceedings is continuation of suit and respondent No.1 has already been allotted with definite share and carving out his share in the suit property is very much necessary and there is no need to file separate application seeking to carve out his share in the suit property. It is admitted by the present petitioners

that the respondent No.1 has been allotted with 7/18th share in the suit property as per decree passed in O.S.No.559/2012. As such the respondent No.1 is entitled to get his share carved out in the suit property. Further any of the party to the suit whose right has been decided by the Court can file final decree proceedings and there is no rule that the plaintiff has to file final decree proceedings. Hence, I proceed to pass the following:

: ORDER :

The memo filed by the respondent No.1 dated 18.12.2019 is hereby allowed.

For appointment of court commissioner.

Call on: **21.02.2022**

Sd/-
**II Addl Civil Judge and JMFC,
Belagavi.**