

KABG040024322019



Presented on : 19-09-2019

Registered on : 19-09-2019

IN THE COURT OF IV ADDL. CIVIL JUDGE AND JMFC BELAGAVI.

**PRESENT: Bhuvaneshwari D. BA, LLB (Hon's), LLM.
IV Addl. Civil Judge & JMFC.,
Belagavi.**

Dated, on this 17th day of March, 2026

FDP No.22/2019

PETITIONERS :	1. Smt. Shanta W/O Ashok Kangralkar Age: 60 yrs, Occ: Household work, R/O: H. No. 1853, Jed Galli, Shahapur, Belagavi 2. Smt. Surekha W/O Suresh Ghorpade Age: 60 yrs, Occ: Household work, R/O: H. No. 244/103, Fulbag Galli, Belagavi
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V/s.

RESPONDENTS:	1. Shri. Vilas S/O Gundu Kundekar Age; 50 yrs, Occ: Agriculture, R/O: Bokanur, Tal and Dist: Belagavi 2. Shri. Appaji Gundu Kundekar (Deceased by his LRs) 2A Smt. Indira W/O Appaji Kundekar Age: 60 yrs, Occ: Household work, R/O: H. No. 2107, Kore Galli, Shahapur, Belagavi.
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2B	Mrs. Reshma D/O Appaji Kundekar Age: 35 yrs, Occ: Household work, R/O: H. No. 2107, Kore Galli, Shahapur, Belagavi.
2C	Mrs. Bhagyashri W/O Mahadev Majukar Age: 33 yrs, Occ: Service, R/o : Opp. Gangapuri Math Mangal Karyalaya, Kore Galli, Shahapur, Belagavi.
2D	Shri. Mahesh S/O Appaji Kundekar Age: 30 yrs, Occ: Service, R/o: H. No. 2107, Kore Galli, Shahapur, Belagavi
2E	Shri. Rajesh S/O Appaji Kundekar Age: 25 yrs, Occ: Service, R/O: H. No. 2107, Kore Galli, Shahapur, Belagavi
3	Shri. Monappa S/O Kittappa Killekar (Deceased. LRs are already on record As Respondent Nos 4 to 8)
4	Smt. Mahadevi W/O Bhimsen Kalasannavar Age: 60 yrs, Occ: Household work, R/O: opp. to Corporation dispensary Galli, Hosur, Belagavi
5.	Smt. Prabhavati W/O Baburao Ghorpade Age: 55 yrs, Occ: Household work, R/O: H. No. 4521, Shetti Galli, Belagavi.
6.	Smt. Laxmi W/O Tukaram Ghadi Age: 52 yrs, Occ: Household work, R/O Swami Nagar, Macche, Tal :Dist: Belagavi
7.	Miss. Deepali D/O Baburao Tarale Age: 28 yrs, Occ: Household work, R/O H. No. 4521, Shetti Galli, Belagavi
8.	Shri. Rohan S/O Baburao Tarale

	Age: 22 yrs, Occ: coolie, R/O H. No. 4521, Shetti Galli, Belagavi
9	Shri. Devdas S/O Raghunath Wadkar Age: 65 yrs, Occ: service, R/O: L. F. D'souza, H. No. 1835, Jed Galli, shahapur, Belagavi
10.	Shri. Vilas @ Yallappa S/O Krishna Belgaonkar Age: 70 yrs, Occ: Service, R/O: Bhosale Chawl, Beside Dr Chatre's Dispensary, Opp. to Shahapur police station, Shahapur, Belagavi
11.	Shri. Bhaurao S/O Krishna Belgaonkar Age; 65 yrs, Occ: Service, R/O: H. No. 1853, Jed Galli, Shahapur, Belagavi
12.	Shri. Sunil Anandache Age: 55 yrs, Occ: Service, R/O: Cross No 2, Mahadwar Road, Belagavi
13.	Shri. Ramesh S/O Huvappa Bekwad (Dead. LRs on record as Respondent Nos. 19 to 21)
14.	Shri. Arun S/O Shankar Pashte (Dead. LRs on record as Respondent Nos 23 to 27)
15.	Smt. Vimal Satawache (Dead. LRs on record as Respondent No. 22)
16.	Shri. Sayyad S/O Karimsab Mulla Since deceased by his Lrs.
16.1.	Shri. Nissarahmed S/o Yusuf @ Sayyed Mulla, Age: 44 yrs, Occ: Plumber R/O: H. No. 231, Goodshed Road, Shastri Nagar, Shahapur, Belagavi.
16.2	Shri. Abdulkarim S/o Yusuf @ Sayyed

	Mulla, Age: 42 yrs, Occ: tiles fitter, R/O: H. No. 231, Goodshed Road, Shastri Nagar, Shahapur, Belagavi.
16.3	Shri. Abubakar S/o Yusuf @ Sayyed Mulla Age: 39 yrs, Occ: Business R/O: H. No. 231, Goodshed Road, Shastri Nagar, Shahapur, Belagavi.
16.4	Shri. Huzefa S/o Yusuf @ Sayyed Mulla Age :37 yrs, Occ: Business, R/O: H. No. 231, Goodshed Road, Shastri Nagar, Shahapur, Belagavi.
16.5	Smt. Amrin W/o Ajamal Hebbali Age: 34 yrs, Occ: household work, R/o: Hukkeri Oni, Munavalli village, Tal Soundatti, Dist Belagavi.
16.6	Smt. Nazmeen W/o Abdulkhadar Peerzade Age: 31 yrs, Occ: Household work, R/O: H. No. 231, Goodshed Road, Shastri Nagar, Shahapur, Belagavi
17.	Shri. Ramchandra Mohite Age: 60 yrs, Occ: Business, R/O: Below Railway Over bridge, Beside Dr. Sarode's Hospital, Goaves, Belagavi
18.	Shri. Parashuram S/O pundalik Ghadi Age: 70 yrs, Occ: Business, R/O: Below Railway Over bridge, Beside Dr. Sarode's Hospital, Goaves, Belagavi
19.	Smt. Suvarna W/O Ramesh Bekwad (Dead. Lrs are on recors as Respondent Nos 20 and 21)
20.	Shri. Sunil S/O Ramesh Bekwad Age: 35 yrs, Occ: Business, R/O: H. No. 2356, Kacheri Galli, Belagavi

	21. Shri. Anil S/O Ramesh Bekwad Age: 28 yrs, Occ: Business, R/O: R. S. No 231, Gokul Nagar, Near Sarode's Hospital Belagavi 22. Smt. Sudha S.Bhopale Age: 50 yrs, Occ: Household work, R/O: R. S. No 231, Gokul Nagar, Near Sarode's Hospital Belagavi 23. Smt. Sulochana W/O Arun Pashte Age: 50 yrs, occ: Household work, 24. Miss: Nikita D/O Arun Pashte Age: 25 yrs, Occ: Household work, 25. Miss: Anu D/O Arun Pashte Age: 23 yrs, Occ: Household work, 26. Miss Amruta D/O Arun Pashte Age : yrs, Occ: Student, 27. Mas: Aniket S/O Arun Pashte Age: yrs, Occ: Student, Respondent No.23 to 26 are R/O: H. No. 372, Anandwadi, Shahapur Belagavi
<u>ORDER ON I.A.No.XII</u>	
APPLICANTS/ PETITIONERS	Smt. Shanta W/o Ashok Kangralkar And others
(By Shri S. M. Desai, Advocate)	
-AND-	
OPPONENTS/ RESPONDENTS:	Shri. Vilas S/o Gundu Kundekar And others
(By Shri. S.G. Ganachari, Advocate for R-1) (By Shri. I. M. Kotwal, Advocate for R-2a to 2e)	

(By Shri. R. P. Modagekar, Advocate for R-4 to 8)
 (By Shri. K. M. Mulla, Advocate for R-16a to 16f)
 (By Shri. S. G. Kakatkar, Advocate for R-20 to 27)
 (R-9 to 12, 17 & 18 : Ex.parte)
 (R-13 to 15 and 19 dead their LRs. R-20 to 27)

PARTICULARS

i	Provision under which the application is filed	Order XXVI Rule 13 r/w Section 151 of C.P.C
ii	Relief sought for	Appointment of Court Commissioner
iii	The date on which the application is filed	10.03.2025
iv	Number of application	IA No.XII
v	The date on which the objections are filed by different opponents	25-06-2025
vi	The date on which the orders were passed on the said application	

ORDER ON I.A.No.XII FILED BY THE PLAINTIFF UNDER ORDER XXVI RULE 13 r/w Sec. 151 OF CPC

This I.A. is filed under order XXVI Rule 13 r/w section 151 of CPC by the petitioners seeking appointment of court commissioner to measure, prepare sketch and propose shares of the petitioners shown in suit schedule A and B properties contending in the affidavit that O.S. No. 831/2007 filed before this court seeking the relief of partition and separate possession was decreed according 1/5th share to the petitioners in the suit schedule A and B properties. It is also mentioned that there is no appeal that is pending in respect of the said proceedings. On these contentions they have sought to appoint city survey officer as court commissioner to carve out shares by means of filing this I.A.

2. The counsel for respondent No.23 to 27 has filed objections submitting that the measurement is not mentioned which makes the decree passed in O.S No.831/2007 as unexecutable. It is further contended that city survey officer cannot be appointed as the suit property is agricultural land. The respondents No.20 to 27 have contended that without mentioning boundary the I.A is not maintainable.

3. Heard counsel for petitioner Shri BLT and counsel for respondents .No.23 to 27 Shri ASL for SGK. Hearing by other respondents is taken as NIL.

4. After considering the materials placed on record and laying emphasis on the arguments advanced by the counsels, the following points arise for the determination of this Court;

POINTS

- 1. Whether the petitioners have made out sufficient grounds to allow I.A.No.XII filed under Order XXVI Rule 13 R/w Sec. 151 of CPC?**
- 2. What order?**

5. Upon perusal of the pleadings and taking note of the oral arguments addressed by the parties on the merits of the said application, this Court answers the aforementioned points as under;

Point No.1 : In the Affirmative.

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

REASONS

6. Point No.1:- It is matter of record that the final decree proceedings have been initiated by the petitioners based on the judgment and decree passed in O.S. No. 831/2007. The portion of the decree is extracted below for ready reference:-

“ Suit of the plaintiffs is decreed in part with costs.

Plaintiff No. 1 and 2 are entitled for the relief of 1/15th share each in both suit schedule ‘B’ and ‘C’ properties and for separate possession.

Draw preliminary decree accordingly.”

7. It is also pertinent to take into consideration the nature of the suit properties which were the subject matter of proceedings in O.S.No. 831/2007,

DESCRIPTION OF THE SUIT PROPERTY**Schedule No. “B”**

Sl. No.	CTS No.	Lane	City	Valuation
1	2107	Kore Galli, Shahapur	Belagaum	Rs.1,00,000/-
2	2108	- Do -	- Do -	Rs.1,00,000/-
			Total Rs.	Rs.2,00,000/-

Schedule No. “C”

Sl. No.	R.S. No.	Area	Assessment	City	Valuation
1.	231	1.30gs	11.33 ps	Belagaum	Rs.1,00,000/-

8. It is evident to note that the final decree proceedings are taken up to carve out and demarcate the shares of the parties in consonance with their

entitlement of shares in the preliminary decree. In this suit as the parties entitlement to the respective portion of the shares is allotted by the court by decree dated 01.10.2018 and orders passed on I.A No.X passed by this court on 30.01.2025 allotting 1/5th share to the petitioners in the suit schedule A and B properties which were referred to as schedule B and C properties in the judgment and decree passed in O.S No.831/2007.

9. Section 75 (iv) enables the court to appoint court commissioner to affect partition and order 26 rule 13 of CPC reads as follows:

"13. **Commission to make partition of immovable property.** - Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree."

10. Perusal of the said statutory provision shows that it is incumbent upon the court to appoint the court commissioner to demarcate the extent of shares and to entail the effective implementation of decree. The objections raised by the respondents of not furnishing correct measurement cannot be considered at this stage as preliminary decree has already been passed and though regular appeal is preferred there is no stay of these proceedings. Suit schedule A property falls within the city survey limits as it is being depicted by CTS No.2107 and 2108 and suit schedule B properties consists agricultural property bearing R.S.No.231 measuring 1 acre 30 guntas and in this section 54 as amended by Karnataka Amendment Act is applicable. The Court deems it appropriate to appoint Court

commissioner accordingly based on the nature of properties. Hence, **this Court answers Point No.1 in the Affirmative.**

11. Point No.2:- Based on the findings of this Court on Point No.1, this Court proceeds to pass the following;

ORDER

*I.A.No.XII filed U/Order 26 Rule 13 R/w
Sec. 151 of CPC is hereby allowed.*

City survey officer, office of ADLR is hereby directed to appoint any of the surveyors attached to his office in respect of suit schedule A property and Tahsildar Belagavi is hereby directed to appoint any of the licensed surveyors in respect of the suit schedule B property to make the partition or separation according to the rights declared in the decree by inspecting and taking measurement and proposing shares in the suit schedule A and B properties.

Commissioner fee in respect of both the properties is fixed at 3,000/- each.

(Dictated to the Stenographer Grade-III directly on computer, typed by her and the transcript revised and corrected by me and pronounced in the open Court, on this 17th day of March, 2026

Sd/-

(Bhuvaneshwari D.),
IV Addl. Civil Judge & JMFC,
Belagavi.