

KABG210001652020



**IN THE COURT OF THE I Addl. CIVIL JUDGE & J.M.F.C., ATHANI
AT: ATHANI.**

Present:

Sri. PRASHANTH NAGALAPUR.,
B.B.A., LL.B.(Hons).
I Addl. Civil Judge & JMFC, Athani

Dated this 6th day of March, 2023.
F.D.P.No. 02 / 2020

1. Smt. Satyawwa W/o. Parappa Kulloli,
Age: 60 years, Occ: Agri., R/o.
Devaradderahatti, Hamlet of Athani,
Now residing at Darur & Anr.

...Petitioners

(By Sri. A.S.S. Advocate)

V/s.

1. Sri. Mahaling Hanamant Nagaral,
Age: 56 years, Occ: Agri., R/o.
Devaradderahatti, hamlet of Athani,
Tal: Athani, Dist Belagavi & Ors.

...Respondents

(Respondent No.3 by Sri. P.B. Salunke, Advocate
Respondent No.2 and 4 by Sri. S.K.P. Advocate
Respondent No.1 exparte)

I.A. IV and V

1. Smt. Satyawwa W/o. Parappa Kulloli,
R/o. Devaradderahatti, Hamlet of
Athani, Now residing at Darur & Anr.

...Applicant/petitioner.

V/s.

1. Sri. Mahaling Hanamant Nagaral,
R/o. Devaradderahatti, hamlet of
Athani, Tal: Athani, Dist Belagavi &
Ors.

....Opponent/Respondents.

: ORDER :

The petitioners have filed applications U/sec. 151 of CPC and U/sec. 6 of the Hindu Succession Act R/w. 151 of CPC, which are numbered as I.A.IV and V.

2. The petitioner No.1 has stated in the affidavits that the suit in O.S.No.753/2002 was decreed and shares of the parties have been determined in the preliminary decree. She has further stated that the defendant No.3 in the said suit Smt. Rukmawwa Hanamant Nagaral died on 18.12.2016 leaving behind the petitioners and respondents of the present petition as their heirs. She has further stated that the share allotted to Rukmawwa has to be allotted to the petitioners and respondents. She has further stated that as per the amendment to section 6 of the Hindu Succession Act, she and her sisters have got

equal share in the properties. She has further stated that the preliminary decree drawn earlier allotting 1/24th share to her is not in accordance with the law. Therefore, she has sought an order to allow the applications and draw another preliminary decree determining the shares of the parties.

3. The respondents have not filed any objection to the applications.
4. I have heard the counsel for the petitioners on the applications and perused the material available on record.
5. The following points arise for determination:
 - 1) Whether the shares allotted to the parties vary in view of the death of Smt. Rukmawwa and also in view of the change in law?
 - 2) What order?
6. My answers to the above points are as under:
 - Point No.1 : In the Affirmative,
 - Point No.2 : As per final order, for the following:

:: REASONS ::

7. **Point No.1** :: The petitioner No.1 herein was the plaintiff in O.S.No.753/2002. The husband of the petitioner No.2 by name Murigeppa was the defendant No.2 in the said suit. The mother of the plaintiff - Rukmawwa was the defendant No.3 in the said suit. As per the contents of the petition and the affidavits filed by the petitioner No.1, it is clear that the defendant No.2 -Murigeppa and defendant No.3 - Rukmawwa are no more. They both have died on 23.8.2016 and 18.12.2016 respectively. The share of the defendant No.2 - Murigeppa has to be allotted to the petitioner No.2 - Sevanti in my considered opinion.

8. As per the contents of the judgment in O.S.No.753/2002, the plaintiff had proved that the suit properties were the properties of the joint family. When the judgment was passed on 10.1.2012, this court relied on the decision of the Hon'ble High Court in M. Prthviraj V/s. Smt. Leelamma N reported in ILR 2009 Kar. 3612 and came to the conclusion that the plaintiff herein was entitled to 1/24th share in the suit properties. The Hon'ble Supreme Court of India in the decision of Vineeta Sharama V/s. Rakesh Sharama reported in (2020) 9 SCC 1 has held that the date of death of father is not relevant and it is not necessary that

father coparcener should be living as on 9.9.2005. It is further observed that the daughters are to be given share in the coparcenary equal to that of a son in pending proceedings for final decree or in an Appeal.

9. The ratio laid down by the Hon'ble Supreme Court in Vineeta Sharama at para No.129 of the decision is aptly applicable to the case on hand. Therefore, I deem it proper to apply the Section 6 of Hindu Succession Act to the case on hand as per the settled law laid down in the Vineeta Sharama.

10. The petitioner No.1 and respondent No.2 to 5 are the daughters of late Hanamant and Rukmawwa. The husband of petitioner No.2 - Murigeppa and the respondent No.1 are the sons of late Hanamant and Rukmawwa. The petitioner No.2 is entitled to take the share of Murigeppa in view of his death. Therefore, in my considered opinion, the petitioners and respondents are entitled to get 1/8th share each in the suit properties by way of partition and separate possession. The shares determined by this court in the earlier judgment and decree in O.S.No.753/2002 are to be rectified in view of the settled position of law. In the facts and circumstances, I am of the considered opinion that the shares of the parties vary in view of death of Rukmawwa and in view of

the law laid down by the Hon'ble Supreme Court in Vineeta Sharama.

Hence, I answer point No.1 in the Affirmative.

11. **Point No.2** :: In view of above discussion, I proceed to pass the following:

:: O R D E R ::

The applications filed U/sec. 151 of CPC and U/sec. 6 of Hindu Succession Act R/w. 151 of CPC are allowed.

The shares allotted to the parties in the judgment and decree in O.S.No.753/2002 are hereby modified.

The petitioners and the respondents herein are entitled to 1/8th share each in the suit properties by way of partition and separate possession.

Office to draw another preliminary decree as per the above order and keep a copy of the same in O.S.No.753/2002.

(Dictated to the stenographer directly on computer, typed by him on computer and corrected by me, then pronounced in the open Court on this the day **6th March, 2023**).

(PRASHANTH NAGALAPUR)
I Addl.Civil Judge & JMFC., Athani.