

KABG410002342011



IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.

:: Present ::

Shri. Nagesh Patil,
B.Com.,LL.B.
I Addl. Civil Judge & JMFC,
Chikodi.

Dated this the 11th day of December 2023

F.D.P.No.6/2011

PETITIONERS: 1. Smt. Kamala Shivaputra Ligade,
R/o: Mahalingapur, Tq: Mudhol
& others

(By Sri. L. V. B, Advocate)

Vs

RESPONDENTS: 1. Sri. Ishwar Mahalingappa Ligade,
R/o: Mahalingapur,

(By Sri. R. B. T, Advocate)

Parties To I.A.No.XVII

Applicants/Ori. Respondents No.16 to 18:

1) Sri. Basappa Rudrappa Panshetti,
& others

Vs

Opponent/Ori. Petitioners:

- 1) Sri. Smt.Kamala Shivaputra Ligade,
& others

**ORDERS ON I.A.NO.XVII FILED UNDER ORDER
47 RULE 1 OF CPC**

The counsel for respondents No.16 to 18 has filed application Under order 47 Rule 1 R/W Sec. 151 of CPC with a prayer to review the order dated 08.09.2023.

2. In support of the application the GPA holder of the respondent No.18 has sworn to an affidavit wherein stated that, the present petition is filed by the petitioners in pursuance of the preliminary decree and for the first time in the year 2011 himself and respondents No.16 and 17 were added as parties to the proceedings and to the earlier proceedings they were not made as parties. It is further stated that during the pendency of the petition this court please to frame the issues and some of the issues were remains to be framed and his counsel submitted before the court to frame issues on those points also. Taking note of this fact the court observed that framing separate issues are not necessary and present issues which are framed by the court are sufficient to held a complete enquiry. It is submitted that additional issues sought to be framed by them are goes to the

root of the case and there are specific pleadings in their objections and looking to the nature of the petitions if those issues were framed it will help the court in deciding the matter in controversy between the parties one for all. Looking to the objections filed by the respondents there is an error apparent on the records which needs to be rectified. Further in spite of due diligence and knowledge of filing of draft issues the said issues were not incorporated and hence the review of order as sought is necessary, if same is allowed no harm or prejudice will be caused to the other side. On the other hand, if same is not allowed they will be put to great hardship which cannot be compensated in terms of money. Accordingly prays to allow the application.

3. Per contra, the counsel for petitioners has filed objections to the application wherein stated that the reasons stated in the affidavit filed in support of application is false and the application is filed only with an intention to delay the proceedings and the court has framed issues as such the application filed by the respondents to review the order is not proper to decide the case. The respondents No.16 to 18 have filed their objections in the objections they have stated entire facts but with intend to delay the proceedings filed this application. The respondents have not shown proper reasons

to allow the application. It is further stated that the respondents No.16 and 18 have filed O.S.No.45/2012 and OS No.279/2015 before Hon'ble Civil Judge Court, Mudhol and respondent No.18 has filed O.S.No.48/2012 the said suits are dismissed. In the said case, the respondents No.16 and 18 have lead evidence and produced documents and the Hon'ble Senior Civil Judge Court, Mudhol by considering the evidence dismissed the suits against the disposal of suits they have not preferred any appeal but in order to delay the disposal of this case filed such an application. If application is dismissed no injustice and loss will be caused to the respondents. Further if the applications are allowed the preliminary decree passed by this court will be against to the previous decree. Accordingly, prays to dismiss the application.

4. Heard the arguments.

5. On hearing both side the point arise for Consideration of this court is as under:

POINTS

1. Whether the respondents No.16 to 18 have made out grounds to review the order dated 08.09.2023 ?
2. What Order?
6. My answer to the above points are as under.

Point No: 1: Negative.

Point No: 2: As per final order,
for the following:

:: REASONS ::

7. **POINT NO.1:-** On perusal of the materials on record, the present petition is filed seeking to draw decree in terms of preliminary decree passed in O.S.No.84/1967. The said suit was filed by the petitioner father and who is now dead and petitioners are his legal heirs against the respondents No.1 to 6 seeking partition and separate possession in house property and agricultural property. The said suit was came to be decreed and plaintiffs, defendants No.1 to 4 therein were allotted 1/5th share each in the suit properties. The respondents No.16 to 18 are added as parties to the petition. They have contended that they are not parties to the suit and the Mahalingappa Ligade had sold out the suit property on 30.05.1967 as per the sale deed they are in possession of the properties purchased. Though the Mahalingappa was aware of the said transaction had deliberately not made the respondents as parties in this suit and they have appeared and filed objections and thereafter this court framed issues on 24/08/2023 and on 08.09.2023 the counsel for respondents No.16 to 18 seeks to frame issues on correctness of report of court commissioner, which is in the file and on the aspect of suit in O.S.No.84/1967 being bad for partial partition. This court after considering the materials on record rejected the prayer of the respondents to frame further issues

against that order the present application is filed to review the order dated 08.09.2023. On perusal of the issues framed by this court and draft issues submitted by the respondents No.16 and 17 as regards the prayer to frame issues on the correctness of report of court commissioner, which is in the file and on the aspect of suit in O.S.No.84/1967 being bad for partial partition is rejected on the ground that as regards the prayer to frame issues on partial partition, it is noticed that issue No.1 framed on 24.08.2023, is whether the respondents No.16 to 18 prove that the decree in O.S.No.84/1967 is collusive decree and same is not binding on them? The respondents No.16 to 18 have in the objections to the main petition contended that O.S.No.84/1967 is filed in collusion, to deprive their rights. The respondents No.16 to 18 have filed objections to the main petition contending that O.S.No.84/1997 is collusion decree so as to deprive the right. Thus, all the contentions including that of partial partition could be determined under the above said issues and rejected the prayer to frame further issues. As such the said issue includes the contention of the respondents as such this court rightly framed the issues and rejected the prayer of the respondents to frame further issues. The present application is filed to review the order dated 08.09.2023, but as per order 14 Rule 5 of C.P.C the court may at any stage of the

proceedings may frame additional issues or strike out issues which are already framed. As such after evidence if it is necessary to frame the issues in respect correctness of report of court commissioner, which is in the file and on the aspect of suit in O.S.No.84/1967 being bad for partial partition the court may frame that issue also before passing the order. As such at this stage the respondents No.16 to 18 have not made out sufficient grounds to review the order dated 08.09.2023. . In the light of the above discussion there is no any error apparent on the records which need not be rectified. Accordingly, point No.1 answered in the Negative.

8. **POINT NO.2:** In view of the above discussion I proceed to pass the following;

ORDER

I.A.No.17 filed U/O. 47 Rule 1
R/W Sec. 151 of CPC is hereby
dismissed.

(Dictated to the Stenographer, typed by her script revised and corrected and then pronounced by me in the Open Court on this 11th day of December 2023).

Sd/-
(Nagesh Patil)
I Addl. Civil Judge & JMFC,
Chikodi