

**IN THE COURT OF THE I ADDITIONAL. CIVIL JUDGE AND
J.M.F.C., CHIKODI.**

Present: Ashok R H
I Addl. Civil Judge & J.M.F.C.,
Chikodi.

Dated this the 7th day of December, 2021

FDP.No.06/2011

Petitioners: 1) Shivaputra Mahalingappa Lingade,
since deceased by his Lrs.

1A) Kamala Shivaputra Lingade
R/o. Vani tailors, Nehru Market.
Dharawad, Dist: Dharwad and others.

(By Shri. L.V, Borannavar, Advocate)

//Vs//

Respondents :1) Mahalingappa Chinappa Lingade,
(Dead) and others.

(By Shri. P.S. Sadarjoshi,
Advocate for R.16 to 18)

I.A.Nos.6, 8, 9 and 10

Applicant/Respondent No.16::

1. Basappa Rudrappa Panashetti and 2 others
Vs//

Opponents/Or.Petitioner:

1. Shivaputra Mahalingappa Lingade,
since deceased by his Lrs. And others

ORDERS ON I.A.No .6, 8, 9 & 10

The respondents No.16 to 18 have filed these applications. IA.No.6 is filed under order VIII Rule 1 R/w Section 151 of CPC seeking permission to produce the documents by condoning the delay. IA.No.8 is filed under Section 151 of CPC seeking permission to consider the IA.No.3 and 6 and decide the same. IA.No.9 is filed under Section 151 of CPC seeking permission to reopen the case for further chief examination-in-chief of the respondent no.1 and lead further evidence by recalling the evidence of the respondent. IA.No.10 is filed under Order 18 Rule 17 R/w Section 151 of CPC seeking an order to set aside the order taking the respondents evidence as Nil and permit them to lead further chief examination.

2. In the affidavit to the IA.No.6, it is stated by the respondent no.16 that documents sought to be produced were not available and same were in custody of the Hon'ble Munsiff & JMFC. court at Nippani. After tracing the same and obtaining the certified copies, he intends to produce the same. It is contended that the documents are very much necessary for final adjudication of this petition.

3. In the affidavit to IA.No.9 and 10, the respondent no.16 has stated that after adducing the evidence of respondent no.16, a Civil Revision petition was preferred before the Hon'ble High Court of Karnataka. In the meanwhile, time was sought before this court for

further examination-in-chief of the RW-1. On 16.08.2018 this court has rejected the adjournment application and has taken the respondent evidence as Nil. The evidence of the respondent no.16 to 18 is very much material. If the IA.Nos.9 and 10 are allowed, no loss or hardship will be cause to the other side.

4. The petitioners have resisted IA.No.6 contending that the respondents no.16 to 18 intend to produce documents which are not at all necessary to decide this petition. The sole intention of the respondents no.16 to 18 is to protract the proceedings. The suit filed by the respondents no.16 and 17 before the Hon'ble Prl Munsiff & JMFC., At Mudahol in OS.No.45/2012 and suit filed by the respondent no.18 in OS.No.48/2012 have been dismissed. The respondents no.16 to 18 have not preferred any appeal against the said dismissal of the suits.

5. The petitioners have resisted the IA.No.9 and 10 contending that the respondents no.16 and 18 have already lead evidence and have exhibited documents as Ex.D.21 to D.138. Even though sufficient adjournments were granted, the respondents no.16 to 18 have not lead further evidence. The same is taken as closed. It is alleged that the respondents no.16 to 18 are, on one or the other reason, protracting the case. The challenge of the order of this court before the Hon'ble High Court of Karnataka by the respondents has been unsuccessful.

6. The points that would arise for the consideration of this Court are as under:

POINTS

- 1 Whether the applications filed by the respondents No.16 to 18 deserve to be allowed?
- 2 What order?

7. Heard and perused the materials placed before the court. The answers of this court to the above Points are as under:

- Point No.1 : In the Affirmative,
Point No.2 : As per final order
for the following

REASONS

8. **Point No.1:** The petitioner (dead) by his Legal heirs, has filed this petition Under Order 20 Rule 18 of CPC in pursuance of the judgment and decree passed in OS.No.84/1967 which was filed seeking the relief of partition. The petitioner has been allotted 1/5th share and preliminary decree has been drawn. The judgment and decree passed in OS.No.84/1967 was challenged in RS.No.258/1969. The said appeal came to be dismissed. Now, it is alleged that there has been no separate shares in the suit property as per the decree passed in OS.No.84/1967. The respondents have resisted the petition.

9. On 18.09.2013 this court had appointed a Taluka Surveyor as court commissioner to demarcate the shares to the parties. The same was challenged by the respondents no.7 and 18 in WP.No.85628/2013 and

WP.No.85629/2013. The said petition came to be disposed off with a direction that *'in a case the petitioners file an application for allotment of shares purchased by their vendor in this FDP, this court has to decide the said application by a speaking order, after affording an opportunity of hearing to the parties'*. The respondents no.16 to 18 herein had filed CRP.No.100080/2018 before the Hon'ble High Court of Karnataka by challenging the order passed on 16.07.2018 that was passed by this court. This court had rejected IA.No.7 filed by the respondents no.16 to 18, wherein the respondents No.16 to 18 had sought for dismissal of the petition as not maintainable. The Hon'ble High Court of Karnataka vide its order dated 24.02.2020 in CRP.No.100080/2018 had dismissed the said Civil Revision Petition. The Hon'ble High court has been pleased to clarify the aspect that the provision of Order II Rule 2 of CPC is not applicable to the final decree proceeding and trial court can pass more than one final decree. The learned counsel for the petitioner has argued and brought to the notice of this court that the respondents no.16 and 17 are not at all necessary parties to this petition and thus, the applications filed by them to reopen the stage of this case for respondents' evidence and further permitting them to produced the documents would be futile. But, looking into the objections filed by the respondents no.16 to 18 herein, they have contended that the decree in OS.No.87/1967 has been obtained by collusion. The properties are situated at Nandagav village at Mudhol

Taluka and this court has no territorial jurisdiction to entertain and try this petition. The respondents no.16 to 18 claim that they have purchased the suit property under registered sale deed. Thus it is claimed that the properties purchased by the respondents no.16 to 17 are to be attached to them and not the other respondents or petitioner. However, expression on merits of the case of the respondents at this stage would be premature.

10. On perusal of the ordersheet, it is forthcoming that the respondents no.16 to 18 have been contesting the petition and have also lead evidence on their behalf. On 16.08.2018, when the case was posted for further respondent evidence, the adjournment that was sought was rejected and further evidence of the respondents was taken as nil. The case was posted for further hearing on IA. Subsequently, the petition was adjourned awaiting order of Hon'ble High Court of Karnataka. At this stage, the applications are filed. Whatever be the contentions of the petitioners and respondents herein, it is on record that the instant petition has been seriously contested by the respondents no.16 to 18. Whether or not they have succeed in proving their contentions is to be seen at a later stage. The respondents no.16 to 18 intend to produce certain documents by leading further evidence. This court has already allowed previous IA and they have produced as many as 138 documents. The petition has to be determined by considering all the material placed before it. Under such circumstances, keeping open all the contentions of all the parties, this court is of the

considered opinion that the applications deserve to be allowed. The delay caused by the respondents No.16 to 18 could be compensated by imposing costs. The respondents No.16 to 18 have filed IA.No.8 Under Section 151 of CPC to bring to the notice of the court regarding the pendency of the IA.No.3 and 6 and for disposal of the same. This court has taken up IA.No.6 for consideration in the instant order. Hence, this court has answered Point No.1 in the Affirmative.

11. **Point No.2:-** For the reasons stated above and the answer to point No 1, this court proceeds to pass the following:

ORDER

IA.No.6 filed by the respondents no.16 to 18 under Order VIII Rule 1 R/w Section 151 is allowed subject to admissibility of documents, on cost of Rs 500/-.

I.A.No.9 filed under Section 151 of CPC and IA.No.10 filed under order 18 Rule 17 R/w Section 151 of CPC by the respondents no.16 to 18 are allowed on costs of Rs.500/- each.

In view of the orders on I.A.No.6 and taking notice of pendency of IA.No.3, IA.No.8 is hereby disposed off.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the Open Court on this 07th of December, 2021)

Sd/-

(Ashok R.H)
I Addl. Civil Judge & JMFC.,
Chikodi