



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 15th day of June, 2022

FDP.No.44/2020

- Petitioners:
1. Smt. Tippavva W/o. Maruti Dasar
Since deceased R/by her LRs.,
 - 1A. Mahaling S/o. Maruti Dasar,
Age: 39 years, Occ: Service,
R/o: H.No.160/A, Gokak Falls, Gokak taluk.
 - 1B. Shankar S/o. Maruti Dasar,
Age: 37 years, Occ: Service,
R/o: H.No.160/A, Gokak Falls, Gokak taluk.
 - 1C. Sushila D/o. Maruti Dasar,
Age: 40 years, Occ: Service,
R/o: H.No.160/A, Gokak Falls, Gokak taluk.
 - 1D. Laxmi @ Laxmibai W/o. Raghavendra
Balawat, Age: 48 years, Occ: Household,
R/o: Vidya Nagar, Muddebihal,
Vijayapur taluk and district.

(By Sri. LNP., Advocate)

V/s

- Respondents:
1. Bhimappa S/o. Hanamant Dasar @ Dandin,
Age: 64 years, Occ: Retired Sheristedar,
R/o: Kappalguddi Tota, Raibag taulk,
Belagavi district.
 2. Maruti S/o. Hanamant Dasar @ Dandin,
Age: 58 years, Occ: Agriculture,
R/o: Hallur village, Mudalagi taulk,
Belagavi district.

3. Ganapati S/o. Hanamant Dasar @ Dandin,
Age: 54 years, Occ: Agriculture,
R/o: Hallur village, Mudalagi taulk,
Belagavi district.
4. Tulasavva W/o. Kanakappa Dasar,
Age: 60 years, Occ: Household,
R/o: H.No.213, Shreyas Block,
SDM Quarters, Vanshi Vihar,
Dharwad-580009.
5. Ramappa S/o. Vittal Dasar
Since deceased R/by his LRs.
- 5A. Kushnavva W/o. Ramappa Dasar,
Age: 68 years, Occ: Household,
CR/o: A.H.Bargi, Near Sai Mandir,
Khatarki Road, Mudhol, Mudhol taluk,
Bagalkot district.
- 5B. Annapurna W/o. Appanna Bargi,
Age: 48 years, Occ: Household,
CR/o: A.H.Bargi, Near Sai Mandir,
Khatarki Road, Mudhol, Mudhol taluk,
Bagalkot district.
6. Govind S/o. Vittal Dasar,
Age: 65 years, Occ: Agriculture,
R/o: Hallur village, Mudalagi taluk,
Belagavi district.
7. Venkappa S/o. Vittal Dasar,
Age: 40 years, Occ: Agriculture,
R/o: Hallur village, Mudalagi taluk,
Belagavi district.
8. Hanamavva W/o. Mahadevappa Dasar,
Age: 70 years, Occ: Household,
R/o: Wajramatti village, Mudhol taluk,
Bagalkot district.
9. Sumitra @ Sushila W/o. Vittal Dasar @
Dandin, Age: 50 years, Occ: Household,

R/o: Kutumbarao Chawl, Vinvekanand Nagar, Bagalkot.

10. Smt. Tippavva W/o. Maruti Dasar
Since deceased R/by her LRs.
- 10A. Sunita W/o. Ganapati Dasar,
Age: 46 years, Occ: Household,
R/o: Hallur village, Mudalagi taluk,
Belagavi district.
- 10B. Rukmavva W/o. Venkat Dasar,
Age: 44 years, Occ: Household,
R/o: Hallur village, Mudalagi taluk,
Belagavi district.

(R1 by Sri. BSK., Advocate)
(R2 & 3 by Sri.NSG., Advocate)
(R-4, 5 (a), (b), 6, 7, 8 & 9 Absent)
(R-10(a) & (b) by Sri. KSB., Advocate)

I.A. No.2 and 5

Applicants : Mahaling & others
V/s
Opponents : Bhimappa and others

COMMON ORDERS ON IA-2 AND 5 FILED UNDER ORDER 6 RULE 17
R/W/S 151 OF CPC

The legal heirs of the petitioner have made the instant applications seeking permission to amend the name of village of property Sl.No.5 by substituting name Kappalguddi in the place of Hallur and deletion of property Sl.No.1 and amend the schedule of the petition as shown in the application No.5 on the

grounds that they have filed the petition against the respondents for the relief of drawing up of a final decree in respect of the suit properties and at the time of the filing of the petition, name of village is wrongly mentioned in the property Sl.No.5 as Hallur instead of Kappalguddi and due to oversight in the schedule of the petition all the properties are mixed up. Hence, it is just and necessary to amend the same as prayed in the applications. If they are allowed the nature of the case will not be changed.

2. The IA.No.2 is resisted by the respondents 1 to 3 contending that it is groundless and averments made in the accompanying affidavit of the application are false and the petitioners are not diligent enough in prosecuting the matter and the proposed amendment will affect the defense of the respondents that the petitioners have not filed the petition and approached this court with clean hands and the petitioners are not shown any sufficient reasons to allow the application. Accordingly, it is prayed for dismissal of the applications with cost.

3. The IA.No.5 is resisted by the respondents 1 to 3 contending that it is groundless and averments made in the accompanying affidavit of the application are false and the petitioners are not diligent enough in prosecuting the matter and have not shown any cogent reasons to allow the application. The court has pleased to grant decree in respect of 10 acres and 04 guntas of land out of Sy.No.119 and claim in respect of remaining extent of Sy.No.119 is rejected. Further, as per the findings given by the court on issue No.4 at page No.40 in (n) para petition property at Sl.No.2 i.e., Sy.No.119/1+2+3/B which is standing in the name of the 1st respondent is his self acquired property and claim of the plaintiff and other defendants are rejected in that survey number and granted decree only to the extent of 10 acres 04 guntas out of Sy.No.119/1+2+3/A and Sy.No.119/1+2+3/C i.e., petition property which is standing in the name of the respondents 2 and 3. Neither the petitioner nor any other respondents have not challenged the judgment and decree passed in OS.No.72/2010. But, the present petitioners are purposely and intentionally claiming their share in respect of the claim rejected properties. Hence, the present petition is not maintainable in law. Accordingly, it is prayed for dismissal of the application with cost.

4. I have heard the learned counsel appearing for the parties and perused the material on record.

5. Points that arise for consideration of the court are;

1. Whether the legal heirs of the petitioner have made out grounds to allow the present applications?

2. What Order?

6. Findings of the court on the above points are as under:

Point No.1: partly in affirmative and

Point No.2: as per final order for the following:

R E A S O N S

7. Point No.1: the amendment sought in respect of substitution of name of the village in the property Sl.No.5 can be allowed as it is not resisted by the respondents. Further, the amendment sought in respect of deletion of the property Sl.No.1 can be allowed as claim against this property is rejected in the preliminary decree.

8. As rightly contended by the respondents 1 to 3, the amendment sought in respect of the properties shown under the title of schedule-‘A’ is not in consonance with the preliminary decree. Wherein, the original plaintiff in the suit is allotted 1/7th

share in 10 acres and 04 guntas including 04 guntas of pot kharab in R.S.No.119 of Kappalaguddi village, southern half portion of the property measuring 01 acre and 20 guntas of R.S.No.120/5 of Kappalaguddi village, house property bearing No.441 and eastern of portion of the house property bearing CTS.No.712. The claim of the original plaintiff for partition in respect of other suit properties is rejected. At the out set, the property R.S.No.120/5, property VPC.No.441 and property CTS.No.712 have already been shown in the petition. However, the petitioners want to put them under the caption of schedule-'A', 'B' and 'C' as mentioned in the preliminary decree. Therefore, the amendment sought in respect of the said properties can be allowed.

9. However, the petitioners have sought to insert the properties R.S.No.119/1+2+3/A, R.S.No.119/1+2+3/B and R.S.No.119/1+2+3/K under the caption of schedule-A. But, these properties are not forthcoming in the preliminary decree. Moreover, their measurement is more than the measurement of the property of R.S.No.119 on which shares are allotted to the parties in the preliminary decree. Even, no satisfactory explanation is forthcoming in the application No.5 as to

mentioning of the said properties and their extent. In the circumstances, the amendment sought in respect of these properties is not in consonance with the preliminary decree. Hence, it cannot be allowed. Accordingly, the point No.1 is answered partly in the affirmative.

10. Point No.2: in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA-2 filed Under Order 6 Rule 17 R/W/S 151 of CPC, is hereby allowed.

The IA-5 filed Under Order 6 Rule 17 R/W/S 151 of CPC, is hereby allowed in part.

Petitioners are permitted to carryout the proposed amendment except the properties Sl.No.1 to 3 of schedule-A of the IA.No.5.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 15th day of June, 2022)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak