

ORDER ON I.A. No.III

1. The instant application has been filed by the petitioner no.1 under Sec.151 of CPC to modify the preliminary decree passed in O.S.No.44/2017.
2. The respondents have not filed any objections to the said application. Hence, the objections to the said application are taken as not filed.
3. I have heard the learned Counsel for the petitioner on I.A.No.III. In spite of giving sufficient time, the respondents have not argued on the matter. Hence, the arguments on I.A.No.III are taken as not addressed.
4. After perusal of the records of the case, the following point would emerge for my consideration:
 - 1) Whether the preliminary decree passed in O.S.No.44/2017 is to be modified in view of the changes in law?
 - 2) To what order?
5. My findings to the above points are as under:

Point No.1: In the Affirmative.

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

REASONS

6. **Point No.1:** In an affidavit appended to the application, it is stated by the petitioner that in O.S.No.44/2017 this court has decreed the suit by allotting their share. He has further stated that now the law has been changed as per the judgement passed in Vinuta Sharama case by the Hon'ble Apex Court the daughter is the coparcener and she has got equal share that of a son and now again he prays to modify the preliminary decree that the plaintiff no.1 is entitled 1/24th share, the plaintiff no.2 and 3 are entitled 1/24th each share and the defendant no.1 is entitled 1/24th share and the plaintiff no.4 is entitled 4/24th share and the defendant no.2 to 7 are entitled 4/24th share and the defendant no.8 is entitled 4/24th share and the defendant no.9 and 10 are also entitled 4/24th each share in the suit schedule B properties and accordingly, among other grounds prays to modify the preliminary decree passed in O.S.No.58/2006.

7. In view of the contentions put forth by the learned Counsel for the petitioner no.1, now, let me see as to whether the preliminary decree is to be modified. It is pertinent to note that in O.S.No.44/2017 this court has decreed the suit and allotted their share on notional partition in the suit schedule properties as per the then law in force. Now, as per the judgement passed in Vinuta Sharma case, the daughter is equal to that of a son and she is the coparcener and she is entitled equal share in the suit properties.

Hence, the preliminary decree is to be modified and now the plaintiff no.1 is entitled 1/24th share, the plaintiff no.2 and 3 are entitled 1/24th each share and the defendant no.1 is entitled 1/24th share and the plaintiff no.4 is entitled 4/24th share and the defendant no.2 to 7 are entitled 4/24th share and the defendant no.8 is entitled 4/24th share and the defendant no.9 and 10 are also entitled 4/24th each share in the suit schedule B properties. Further, it is pertinent to note that if this application is not allowed, the petitioners will be put to untold hardship which cannot be compensated in terms of money. Accordingly, I answer this point in the Affirmative.

8. **Point No.2:** In view of my discussion made supra, I proceed to pass the following:

ORDER

I.A.No.III filed by the petitioners under Sec.151 of CPC is hereby allowed.

The plaintiff no.1 is entitled 1/24th share, the plaintiff no.2 and 3 are entitled 1/24th each share and the defendant no.1 is entitled 1/24th share and the plaintiff no.4 is entitled 4/24th share and the defendant no.2 to 7 are entitled 4/24th share and the defendant no.8 is entitled 4/24th share and the defendant no.9 and 10 are

also entitled 4/24th each share in the suit
schedule B properties as per the law in force.

The office is hereby directed to draw
preliminary decree in O.S.No.44/2017 as per the
order passed by this court today.

No order as to costs.

(Hanamantarao R.Kulkarni)
Senior Civil Judge & JMFC,
Hunagund.