

**IN THE COURT OF THE ADDL. SENIOR CIVIL
JUDGE AT JAMKHANDI.**

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

**Addl. Senior Civil Judge,
Jamkhandi.**

Dated: 13th Day of SEPTEMBER 2021

FDP.No.22 of 2020

Sri.Gurappa s/o Basappa Tuppad.

..... Petitioner

V/s

Shivappa Basappa Tuppad

Dead by LRs & Ors.

.....Respondents

IA.No.II

- 1.** Sri.Shivalingappa s/o Mallappa Arakeri,
Age: 56 years, Occ: Agriculture,
R/o Jamkhandi, Dist: Bagalkot.
- 2.** Smt.Saraswati w/o Mallappa Teli,
Age: 66 years, Occ: Household work,
R/o Tuppad Galli, Jamkhandi.
- 3.** Smt.Nimbevva w/o Mahadev Mayappanavar,
Age: 58 years, Occ: Household work,
R/o: Savadi, Tq: Athani, Dist: Belagavi.
- 4.** Smt.Mahadevi w/o Chandrakanth Shirahatti,
Age: 54 years, Occ: Household work,
R/o Hanuman Nagar, Belagavi.

.... Applicants/Proposed R5 to 8

V/s

Sri.Gurappa s/o Basappa Tuppad & Ors.

.... **Opponents/Plff & Defts**

Order on IA-2; u/O 1 Rule 10 (2) r/w Sec.151 of CPC:

Applicants moved this application seeking permission to self implead themselves as respondents-5 to 8.

2. Petitioner resisted the application by filing statement of objections.
3. Heard arguments.
4. Following point arises for consideration.

Whether the proposed respondents-5 to 8 are necessary parties to the proceedings?

5. Answer to the above point is in **affirmative** for the following;

REASONS

6. At the outset; petition is filed for drawing up of final decree on the basis of preliminary decree passed in OS.No.86/13, wherein petitioner is awarded 1/4th + 1/20th share in the land bearing RS.No.1/1+2+3+4/E

(2Gs) and 1/4th share in land RS.No.1/1+2+3+4/B (5Gs) and CTS.No.4602 of Jamkhandi. Respondents-1 & 2 herein awarded 1/4th + 1/20th share in land bearing RS.No.1/1+2+3+4/E and 1/4th share in land RS.No.1/1+2+3+4/B and CTS.No.4602 of Jamkhandi. Suit is dismissed in respect of lands bearing RS.No.420/2 & RS.No.1/1+2+3+4/I and CTS.No.2326. Suit is dismissed against defendants-5 to 27.

7. After registration of petition; notices were issued. Respondents-1(A to C), 3 & 4 were placed ex parte. Learned advocate Sri.RJS represents respondent-2 but failed to file objections.

8. Applicants filed this application for the relief stated supra by stating that; Sri.Gurappa Basappa Tuppad (opponent-1) filed suit for partition in OS.No.86/13, wherein their (applicants) father Mallappa Shivalingappa Arakeri was arrayed as

defendant-12 and he was placed ex parte, as he could not attend the Court due to old age. Their father died on 10.08.20. Final decree proceedings are initiated without arraying legal heirs (applicants) of deceased defendant-12. They stated that; land bearing RS.No.1/1+2+3+4/B was purchased by their paternal grand mother Basalingavva w/o Shivalingappa Arakeri under a registered sale deed dated 25.06.1932 and they are owners in possession of said property. Said fact is suppressed by the petitioner, as such their presence is necessary for complete and effective adjudication of the matter and also to decide their ownership over said property.

9. Petitioner objected the application by contending that; defendant-12 as well as present applicants were aware of proceedings of OS.No.86/13 & the judgment passed therein. In final decree proceedings application

for determination of rights of the parties is not tenable because in final decree proceedings Court cannot decide rights of the parties. Question of suppression of facts does not arise because defendant-12 was a party to suit, wherein summons were duly served on him and he remained absent. Applicants have not challenged preliminary decree passed in OS.No.86/13, as such present application is not maintainable.

10. The only short question arises for consideration is whether the applicants being legal heirs of deceased defendant-12, who is placed ex parte in the suit, which is dismissed against him and he has not filed any appeal against preliminary decree can maintain the present application in the final decree proceedings.

11. By virtue of Section 97 CPC, if an appeal is not filed against preliminary decree and its correctness is not challenged, it becomes final & the party aggrieved

thereby will not be permitted to challenge its correctness in an appeal against final decree. There is a distinction between a case in which an appeal is filed against a preliminary decree and a case in which preliminary decree is not appealed against and its correctness is not assailed. Here, defendant-12 has not filed appeal against preliminary decree but his legal heirs by filing the present application are assailing the correctness of preliminary decree, which is permissible under law. Final decree proceedings are continuation of suit for partition. Preliminary decree only declares and determines the share of parties. Actual division, putting parties in separate possession of their shares & adjustment of equities, impartibility of suit property and all other disputes have to be settled in final decree proceedings.

12. In case of Ganduri Koteshwaramma & Anr V/s

Chakri Yanadi & Anr, **AIR 2012 SC 169** it is held that; *a preliminary decree determines the right and interests of the parties. Suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After passing of preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e., after passing of preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the Court to amend the preliminary decree or pass another preliminary decree re-determining the rights and interests of the parties having regard to the changed situation.*

The Court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that once a preliminary decree has been passed, it is incapable of modification. It needs no emphasis

that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings. Section 97 CPC, which provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of Court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial Court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree.

13. In a decision reported in **ILR 2020 KAR 4370**, *Vineeta Sharma V/s Rakesh Sharma*, it is held that; *preliminary decree does not bring about any irreversible*

situation. Pending final decree shares are liable to be varied on account of intervening events. Suit is not over till passing of final decree. Court has power to reverse preliminary decree if changed circumstances so demand. Unless and until actual partition is fully worked out, rights have to be worked as they exist at the time of final decree.

14. In case of *Kanthamma & Anr V/s Srinivasa Gowda & Ors*, **2020 (3) AKR 643** it is held that; *petitioners claiming that proposed defendants are necessary parties as they are purchasers of suit land. Land purchased by defendants during 2004. Impleadment sought at stage of arguments. Petitioners are not diligent while prosecuting case. If defendants are necessary parties they could be impleaded during final decree proceedings.*

15. In the light of discussion supra coupled with the factual matrix at hand i.e., applicants claiming to be owners of suit land bearing RS.No.1/1+2+3+4/B, wherein shares are allotted to plaintiff and defendants

and suit against defendant-12 under whom the applicants are claiming title over said property is dismissed and the proposition of law laid in the above decisions it can be said that the objections raised by the petitioner about the maintainability of application at hand are not tenable. Hence, above point is answered in affirmative and proceeds to pass the following;

ORDER

IA.No.II; under Order 1 Rule 10(2) r/w Section 151 CPC filed by the Applicants is allowed.

Applicants are arrayed as respondents-5 to 8.

Petitioner is directed to amend the petition and supply amended petition.

No order as costs.

(Dictated to the Stenographer and directly typed by her, corrected and initialed by me and then pronounced in the open Court on 13.09.21).

sd/-

(A.SAMIULLA)

Addl. Senior Civil Judge

Jamkhandi.

/skn/