

KABR010014812026



**IN THE COURT OF I ADDL. DISTRICT & SESSIONS  
JUDGE, BENGALURU RURAL DISTRICT,  
BENGALURU.**

**Dated this the 16<sup>th</sup> day of April, 2026**

**PRESENT**      **Sri. Siddalinga Prabhu. B.Sc., LL.B.,**  
I Addl. District & Sessions Judge,  
Bengaluru Rural District, Bengaluru.

**RA No.53/2026**

**Appellant:**                      M. Gopala Reddy,  
Aged about 70 years,  
S/o R.M. Reddy,  
R/at Singanayakanahalli Village,  
Yelahanka Hobli,  
Bengaluru North Taluk.

**[represented by–  
Sri.GSV- Advocate]**

-Vs-

**Respondent**                      :      Dr. M.S. Shivamurthy,  
S/o M. Channappa,  
Aged about 70 years,  
R/at No.95(33), 10<sup>th</sup> Cross,  
12<sup>th</sup> Block, Kumarapark,

Bengaluru-560 020.

**[represented by–  
Sri. RBN-Associates]**

**ORDER ON MAIN APPEAL**

This Memorandum of Regular Appeal dated 12.03.2026 is preferred by Sri. M. Gopala Reddy S/o R.M. Reddy by invoking Section 96 of CPC questioning the legality and correctness of the orders dated 02.03.2026 passed by the learned II Addl. Senior Civil Judge, Bengaluru Rural District, in FDP No.21/2024.

**2. *The parties to this memorandum of appeal are hereinafter referred according to their respective ranks as assigned to them before the trial Court in the proceedings of said FDP No.21/2024***

3. The facts leading to the present Memorandum of Appeal are as follows:

3.1. The parties herein being friends had jointly purchased immovable property of Agricultural land measuring 4 acres 35 guntas in Sy.No.62 of Singanayakanahalli village by virtue of registered sale

deed dated 04.02.1991. That on account of misunderstanding and consequential disputes, Dr. M.S. Shivamurthy the petitioner preferred suit in O.S.No.210/1995 seeking the relief of Partition. The said suit was decreed by virtue of judgment and decree dated 13.12.2000. Being aggrieved by the said decree, the respondent Sri. M. Gopala Reddy, had, after lapse of two decades, preferred Regular Appeal in R.A.No.143/2024. That the same was dismissed due to the said delay of more than two decades. Thereafter, the said respondent preferred Regular Second Appeal in RSA No.1615/2025, the same is still pending for disposal. That the respondent did not obtain any order of stay in his favour in the proceedings of the said RSA. Therefore the proceedings as initiated by the Dr. M.S. Shivamurthy the petitioner in FDP No.36/2001 had been continued. That the trial Court, in the said FDP proceedings, appointed the Tahsildar of Yelahanka, Bengaluru as Court Commissioner and called upon him to divide the suit property i.e., property of agricultural land measuring 4 acres 35 guntas in Sy.No.62 of Singanayakanahalli village into two equal portions. That the Court Commissioner while executing the

Commissioner Warrant had not only divided the suit land into two equal portion but also allotted the shares and submitted its report. That the parties hereto did not raise any objection to the said report of Court Commissioner. Despite of such 'no objections' by the parties hereto, the trial Court had noticed that the Court Commissioner, though he was called upon to divide the property into two equal shares, had exceeded his limits by allotting the shares to the parties hereto. Therefore the trial Court by rejecting the shares as allotted by the Court Commissioner, called upon the petitioner Dr. M.S. Shivamurthy to choose his particular share. Thus the petitioner had chosen Block-II as his share. The trial Court did so on the ground that it was the petitioner who approached the court of law seeking the relief of Partition. Therefore the trial Court drawn Final Decree by allotting Block-I share in favour of respondent M. Gopala Reddy and Block-II share in favour of M.S. Shivamurthy the petitioner and thus drawn the final decree.

4. Being aggrieved by the judgment of final decree passed in FDP No.21/2024 by the trial Court, the

respondent M. Gopala Reddy prefers the present Memorandum of Appeal under consideration by urging the following

**GROUND**

4.1. That the trial Court had ignored the say of respondent/appellant to the effect that his father-in-law by name Sri. Ashwathaiha is the owner of remaining extent of land in Sy.No.62 of Singanayakanahalli village and that the said remaining extent situates besides Block-II and therefore the respondent/petitioner prayed for allotment of Block-II as his share. That in the event of allotting Block-II to the respondent/petitioner no hardship or inconvenience would have caused to the respondent/petitioner. Despite of such prayer, the trial Court allotted Block-II to the share of respondent/petitioner. Therefore the impugned order is illegal, perverse and is not sustainable order.

4.2. That the trial Court while passing the impugned order discussed nothing about the statement of objections as preferred by respondent/petitioner. On the other hand the trial Court was pleased to held that the Court

Commissioner had exceeded his jurisdiction in allotting the shares to the parties. This particular observation made by the trial Court deserves to be interfered with.

4.3. That the trial Court is not justified in saying that the respondent/petitioner having approached the Court of law, be given priority to chose his share. That the trial Court has ignored the fact that the petitioner/respondent is not a member of the family of appellant, that nor is respondent/petitioner the relative of appellant. By urging so inter-alia, the appellant/respondent prays for an order to set aside the impugned order of final decree and to allot Block-II to the share of appellant/respondent.

5. In the course of arguments the learned counsel for appellant/respondent repeated the above said grounds of appeal besides relying on a case law rendered by the Division Bench of Hon'ble High Court of Madras in the case of K. Vijayalakshmi and three others V/s K. Sasikanth.

6. On the other hand the learned counsel appearing for respondent/petitioner supports the impugned

judgment and says that the shares of Block-I and Block-II have similar value and similar measurements. That the appellant has urged no valid ground enabling this court of appeal to interfere with the impugned order. Thus he prays for dismissal of appeal and confirming of impugned judgment. In support of his say the learned counsel for respondent/petitioner has relied on the following case laws:

- 1) RSA No.1595/2013
- 2) RSA No.1932/2021 (PAR)

7. The above said arguments give raise to the following points for consideration:

- 1) Has the trial Court committed an error in observing that the Court Commissioner has exceeded his limits while executing the Commissioner Warrant by allotting shares of parties ?
- 2) Has the trial Court committed an error in calling upon the respondent/petitioner to chose either Block-I or II in the course of hearing on the main petition ?

- 3) Is there any scope to interfere with the impugned judgment?
- 4) What order?

8. Having perused the materials placed before this court of appeal and having heard the learned counsel of appellant, this court of appeal assigns the following:

### **REASONS**

8.1. It is the repeated say of appellant that his father-in-law is the owner of remaining portion of land in Sy.No.62. That the land of his father-in-law situates besides Block-II property. ***That for the reasons best known to the appellant he does not disclose the remaining extent of land in Sy.No.62 possessed and owned by his father-in-law.***

8.2. To counter the said arguments, the learned counsel appearing for respondent/petitioner has invited the attention of this court to the document of RTC for the year 2025-26 in respect of land in Sy.No.62 of Singanayakanahalli village. The contents of the said RTC documents do narrate that M. Ashwathaiah S/o late

Muniyappa the father-in-law of appellant/respondent owns and possess just 3 guntas of land in Sy.No.62. The learned counsel further says that in all preponderance of probabilities the wife of appellant/respondent being one of the three children of said M. Ashwathaiah would get an extent of 1 gunta as her share in the event of family partition among M. Ashwathaiah and his children. That the said extent of 1 gunta or the total extent of 3 guntas deserve no consideration. This reply being unopposed deserves consideration.

8.3. It is not the case of appellant/respondent that the Court Commissioner while dividing the land as Block-I and II lands made any illegality. Nor is it the case of appellant/respondent that the land at Block-I and II have different market values. The appellant/respondent does not even mention that the lands at Block-I and II do not have independent access. The only ground urged by him is that the father-in-law does own and possess the remaining extent of land which situates besides Block-II and therefore that he be allotted the land Block-II.

8.4. It is needless to mention herein that the fact that

the father-in-law of appellant/respondent owns and possesses remaining extent of land which situated besides Block-II land cannot give any right whatsoever to the appellant to insist for the Block-II land. But as per the Catena of Authorities, the personal convenience cannot be a ground to chose the share portions of the land. Therefore the said ground as urged by appellant/respondent is not a sustainable ground.

8.5. It is not the case of appellant/respondent that the trial Court while issuing Commissioner Warrant had called upon the Court Commissioner to allot the portions. Therefore as pointed out by the trial Court, the Court Commissioner while executing the Warrant of Commission has exceeded his limits by allotting the shares. The duty of Court Commissioner was to divide the lands equally in all aspects. That besides doing so, he committed a mistake by allotting/earmarking the shares. Therefore the observation made by the trial Court in this behalf cannot be find fault with. So also the fact that the trial Court had called upon the respondent/petitioner to chose his share.

8.6. At the cost of repetition, it is relevant to mention herein that the appellant does not say that the market value of lands of Block-I and II are different. Nor does he complains that the measurement of Block-I and II are not similar.

***8.7. For the above said reasons the appellant cannot take shelter under the provisions of law as relied on by him.***

8.8. Therefore for the said reasons and for those assigned in the preceding paragraphs, this court answers ***point No.1 to 3 in the Negative*** and proceeds to pass the following:

**ORDER**

That for the aforementioned reasons, the appeal preferred under Section 96 of CPC challenging the legality and correctness of the orders dated 02.03.2026 passed in FDP No.21/2024 is hereby ***dismissed***.

No order is passed in respect of cost.

Office to draw decree accordingly.

Send the copy of this order to the trial court forthwith.

(Dictation given to the Stenographer, transcribed by her, corrected by me and then pronounced in open Court on this the **16<sup>th</sup> day of April, 2026**)

**(Siddalinga Prabhu)**

I Addl. District & Sessions Judge,  
Bengaluru Rural District, Bengaluru.