



N THE COURT OF THE PRL. CIVIL JUDGE,

AT HOLALKERE

Present: Sri. UMESHA, M. P., B.A.L., LL.B.
PRL. CIVIL JUDGE & JMFC,
HOLALKERE

DATED: ON THIS THE 09th DAY OF FEBRUARY - 2024

F. D. P. No. 18 / 2019

PETITIONER

: THIMMAPPA S/o Late.Thimmappa,
Aged about 72 years, Occ: Agriculturist,
R/o Padigatte Village, Holalkere Tq.
(BY PLEADER SRI.GER)

-V/s-

RESPONDENTS

1. PUTTAPPA S/o Thimmappa,
Aged about 63 years, Occ: Agriculturist,
R/o Padigatte Village, Holalkere Taluk.
2. ESHWARAPPA S/o Thimmappa,
Aged about 61 years,
Occ: Employee in Chitradurga Gramina Bank,
Arehatti Branch, R/o Holalkere Taluk.
3. SMT.ANASUYAMMA
W/o Padagere Ramcahandrappa,
Aged about 57 years,
R/o Santhebennur Village, Channagiri Tq.
4. SMT. SAROJAMMA w/o Late.Thimmappa,
Aged about 73 years,
R/o Padigatte Village, Holalkere Taluk,
5. SMT. NIRMALA D/o Thimmappa,
Aged about 43 years,



R/o N.G.Halli, Hosadurga Road,
Holalkere Taluk.

6. **SMT. PUSHPA** D/o Thimmappa,
Aged about 40 years,
R/o Padigatte Village,
Holalkere Taluk.
7. **RANGAPPA @ RANGANATHA,**
S/o Thimmappa, Aged about 37 years,
R/o Padigatte Village, Holalkere Taluk.
8. **SMT.PREMA** W/o Devendrappa,
Aged about 51 years,
R/o Gunjiganur Village,
Holalkere Taluk.

(BY PLEADER SRI.MBA FOR RESPONDENT NO.2)
(BY PLEADER SRI.LKS FOR RESPONDENT NO.4 to 6 & 8)
(RESPONDENTS NO.1, 3 & 7 ARE PLACED EXPARTE)

PARTIES TO I. A. No. IV

- APPLICANTS/RESPONDENT NO.4 TO 6 & 8:**
4. **SMT.SAROJAMMA** W/o Late.Thimmappa,
Aged about 73 years,
R/o Padigatte Village, Holalkere Taluk,
 5. **SMT. NIRMALA** D/o Thimmappa,
Aged about 43 years,
R/o N.G.Halli, Hosadurga Road,
Holalkere Taluk.
 6. **SMT. PUSHPA** D/o Thimmappa,
Aged about 40 years,
R/o Padigatte Village,
Holalkere Taluk,



8. **SMT.PREMA** W/o Devendrappa,
Aged about 51 years,
R/o Gunjiganur Village,
Holalkere Taluk.

(BY PLEADER SRI.LKS FOR RESPONDENT NO.4 to 6 & 8)

V/s

OPPONENT/PETITIONER: **THIMMAPPA** S/o Late.Thimmappa,
Aged about 72 years, Occ: Agriculturist,
R/o Padigatte Village, Holalkere Tq.
(BY PLEADER SRI.GER)

ORDER ON I. A. No IV

The IA is filed by the respondents No.4 to 6 & 8 U/Sec.151 of CPC, requesting to modified the preliminary decree passed by the Additional Junior Civil Judge, Holalkere, in O.S.No.107/2003 and also decree passed by the Hon'ble Senior Civil Judge, Holalkere in R.A.No.31/2006 in view of the judgment of Hon'ble Supreme Court of India in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others by allowing this application in the interest of justice and equity.

2. According to the respondents No.4 to 6 and 8 in the above case and they know the facts of the case. It is further stated that, the respondent No.4 to 8 have file suit for partition before the additional



Junior Civil Judge in O.S.No.107/2003 and the suit was decreed in favour of Respondent No.4 to 8. It is further stated that, against the said judgment and decree, the petitioner and the respondent No.1 to 3 have preferred an appeal before the Hon'ble Senior Civil Judge Holalkere in R.A.No.31/06. It is further stated that, the Hon'ble Senior Civil judge, Holalkere has allowed the said appeal and modified the judgment of the trial court and ordered that, the respondent No.4 to 8 are together entitled for 14/45 in the suit schedule properties. It is further stated that, the petitioner has filed this petition as per the judgment & decree of the Hon'ble Senior Civil Judge, Holalkere in RA No.31/2006 seeking for the relief of final decree and division the suit properties as per the decree of R.A. No.31/2006. It is further stated that, the Hon'ble Supreme Court of India has passed the Judgment in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others wherein this judgment para No.125 clearly stated that, "there may be change of rights during the pendency of suit for alerting definite shares till final decree is passed. There are cases in which partition can be reopened and the ground of fraud of mistake, etc, or on certain other



permissible grounds”. It is further stated that, as per the Amendment of Hindu Succession Act, 2005 the applicants have entitled equal share in the suit schedule properties. Hence, they prayed to modify the decree of O.S.No.107/2003 and also decree of R.A.No.31/2006 as per the judgment of Hon'ble Supreme Court of India in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others by allowing this application in the interest of justice and equity.

3. Per contra, the learned counsel for the petitioner has opposed the same by filing objections to IA No.4 contending that, the present application filed by the respondents is not maintainable either in law or on facts and circumstances of the case. It is further contended that, in the accompanying application the respondent sought for “to modified the preliminary decree passed by this court in O.S.No.107/2003 and also decree passed by Hon’ble Senior Civil Judge, Holalkere in R.A No.31/2006”. It is further contended that, in the body of memorandum of petition has sought for re-open of partition suit on the ground of fraud, mistake, etc.,. It is further contended that, the said relief cannot be granted at this stage of



proceedings and application mentioned prayer is not maintainable and hence, same is liable to be dismissed with heavy costs. It is further contended that, in the application the respondents have not shown date of decree in O.S.No.107/2003 and decree in R.A. No.31/2006 and further have not stated that what purpose the preliminary decree has to be modified and what is modification is required. Hence, without any particulars in prayer the application is liable to be dismissed with heavy costs. It is further contended that, original suit was filed by respondents about 19 years back in O.S. No.107/2003 and same was decreed and the petitioner has challenged said decree in the year 2006 in R.A No.31/2006 and said R.A was partly allowed by its judgment decree dated:02.12.2011. It is further contended that, the respondents have not preferred any RSA challenging said decree of Regular appeal. It is further contended that, the respondents have not challenged judgment and decree dated: 02.12.2011 passed in R A No.31/2006 the respondents have satisfied with said judgment and decree and have admitted the decree of Regular Appeal. It is further contended that, after disposal of said RA, the respondents neither have filed appeal nor have filed



final decree proceedings for separate possession of allotted each share. Hence, finally after several demands, having no other options the petitioner after 10 years of decree has filed the above FDP proceedings before this Hon'ble Court seeking to put the petitioner in his separate allotted share in the joint family proceedings. Hence, against the admitted and unchallenged decree the respondents application is not maintainable and same is liable to be dismissed with heavy costs. It is further contended that, the respondents filed application with memorandum of facts and seeking for modification of decree. It is further contended that, the respondents have not sworn to the affidavit. It is further contended that, in support of memorandum of facts of third party reasons, the decree cannot be modified. It is further contended that, the law has not permitted to file such kind of application and hence, the application is not maintainable. Hence, the ground alone the application is liable to be dismissed with heavy cost. It is further contended that, in support of application in the memorandum of facts, the respondents falsely stated that, when the decree has obtained fraudulently and misrepresentation under such circumstance partition suit has to be



re-opened and referred the judgment of Hon'ble Apex Court. It is further contended that, "When partition was sought by respondents and obtained decree against the petitioner and when respondents not challenged the admitted decree for about 10 years and not opened their mouth till the day the question of fraud, fraudulent, misrepresentation does not arise." It is further contended that, the referred judgment is not applicable to the present final decree proceedings. Hence, the ground alone the application is liable to be dismissed with heavy costs. It is further contended that, due to act of the respondents, since past 30 years, the petitioner is suffering to get his legal share in the joint family ancestral properties. It is further contended that, now also the respondents wanted to drag the proceedings instead of proceed with final decree proceedings. It is further contended that, original partition suit was filed by them seeking partition and now the respondents only objecting to end the dispute in accordance with law through final decree proceedings. Therefore, the present application is filed only to drag the proceeding and to harass the petitioner and hence, for the said



reasons this Hon'ble court be pleased to dismiss the application of the respondents with costs, in the interest of justice and equity.

4. I have heard the arguments of both the counsels and perused the documents on record.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration:

1. Whether the applicants/respondent No.4 to 6 &8 have made out grounds to allow the IA No.4 as prayed for, at this stage?

2. What order?

6. My answer for the above points are as under because of my below-discussed reasons:

POINT NO.1 : IN THE AFFIRMATIVE

POINT NO.2 : AS PER THE FINAL ORDER FOR THE FOLLOWING

REASONS

POINT NO.1:

7. Admittedly, the petitioner has filed this petition to draw final decree in accordance with preliminary decree passed by the Hon'ble Senior Civil Judge and JMFC, Holalkere in RA No.31/2006. Along with petition, the petitioner has produced certified copy of the



preliminary decree passed in R.A.No.31/2006. From the careful perusal of petition averments and the preliminary decree placed on record, it clearly establishes that, the respondents No.4 to 8 being the plaintiffs had instituted suit bearing O.S.No.107/2003 against the petitioner and respondents No.1 to 3 as defendants for partition and separate possession of their respective share in the suit schedule properties and the suit was decreed in favour of Respondent No.4 to 8. Further, against the said judgment and decree, the petitioner and the respondent No.1 to 3 have preferred an appeal before the Hon'ble Senior Civil Judge Holalkere in R.A.No.31/06. Further, the Hon'ble Senior Civil judge, Holalkere has allowed the said appeal and modified the judgment of the trial court and ordered that, the respondent No.4 to 8 are together entitled for 14/45 in the suit schedule properties. Further, the Hon'ble Supreme Court of India has passed the Judgment in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others wherein this judgment para No.125 clearly stated that, "there may be change of rights during the pendency of suit for alerting definite shares till final decree is passed. There are cases in which partition can be re-



opened and the ground of fraud of mistake, etc, or on certain other permissible grounds”. Further, as per the Amendment of Hindu Succession Act, 2005 the applicants have entitled equal share in the suit schedule properties. It is just and necessary to modify the decree of O.S. No.107/2003 and also decree of R.A.No.31/2006 as per the judgment of Hon'ble Supreme Court of India in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others in the interest of justice and equity.

8. Further, the provisions contained in substituted Section 6 of the Hindu Succession Act,1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal. Hence, all the Legal representatives of the Said Thimmappa gets equal share with that of the deceased Thimmappa in the ancestral and joint family properties. Hence the petitioner and the respondents are entitled for equal share in the suit properties. Hence the petitioner and the respondents are entitled for



equal share in the suit properties. It is ordered and decreed that, the petitioner is entitled for his 1/9th share in the suit properties and he is entitled for the partition and separate possession of the same by metes and bounds. It is ordered and decreed that, the respondents No.1 to 8 are entitled for their 1/9th share each in the suit properties and they are entitled for the partition and separate possession of the same by metes and bounds. The parties have to pay requisite court fee with respect to their respective shares.

9. On careful consideration of the principles enunciated in the above referred decision it is obvious that the preliminary decree has to modified as per the judgment of Hon'ble Supreme Court of India in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others. Hence, I answer the point No.1 in the Affirmative.

POINT NO.2

10. In view of the reasons assigned above, I proceed to pass the following order:

ORDER

I.A.No.IV filed by the respondent No.4 to 6 & 8 under the provisions of U/Sec.151of CPC is hereby allowed as prayed.

It is ordered and decreed that, the petitioner is entitled for his 1/9th share in the suit properties and he is entitled for the



partition and separate possession of the same by metes and bounds.

It is ordered and decreed that, the respondents No.1 to 8 are entitled for their 1/9th share each in the suit properties and they are entitled for the partition and separate possession of the same by metes and bounds.

The parties have to pay requisite court fee with respect to their respective shares.

Office is hereby directed to draw preliminary decree as per the orders on IA No.4 and as per the judgment of Hon'ble Supreme Court of India in Civil appeal No.32601 of 2018 in Vineeta Sharma -V/s- Rakesh Sharma & others

(Dictated to the stenographer directly on compute, typed by her, corrected and signed and then pronounced by me in the Open court on this the 09th day of FEBRUARY -2024)

(UMESHA.M.P)
Prl.Civil Judge,
Holalkere.