



IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND
J.M.F.C. AT KADUR

PRESENT: Sri. Thahakaleel K.A. B.A. LL.B
III Addl Civil Judge and JMFC Kadur
C/c II Addl Civil Judge and JMFC Kadur.

Dated 30th day of June 2026

F.D.P No.12/2020

- 1. Smt. Rudramma D/o Late. Manjappa,**
W/o Nagaraju,
Aged about 28 years, House-wife,
- 2. Smt. Rathnamma W/o Late. Manjappa,**
Aged about 51 years, House-wife,

Both are R/o H. Thimmapura Village,
Chowlahiriyur Hobli, Ajjampura Taluk,
Chikkamagalur District.

....Petitioners

(By Sri. K.M.J. Advocate)

-V/s-

- 1. Sri. Puttappa Since dead by his Lrs.,**
D1(a) Smt. Basamma W/o Puttappa,
Aged about 75 years, House-wife,
R/o H. Thimmapura Village,
Chowlahiriyur Hobli,
Ajjampura Taluk, Chikkamagalur District.
- 2. Smt. Sharada W/o Late. Annappa,**
Aged about 42 years, House-wife,



- 3. Kumari Megha D/o Late. Annappa,**
Aged about 21 years, Student,

Respondent No.2 and 3 are
R/o Thippegonadanahalli Village,
Ajjampura Hobli, Tarikere Taluk.

- 4. Smt. K.S. Bhagya W/o Srinivasa,**
Aged about 37 years, House-wife,
R/o Kalkere Village, Chowlahiriyur Hobli,
Ajjampura Taluk.

- 5. Smt. Manjula D/o Puttappa,**
W/o Chandrashekarappa A.S.
Aged about 47 years,
R/o Annapura, Ajjampura Hobli,
Tarikere Taluk.

- 6. Choodamani D/o Puttappa,**
W/o Krishnappa,
Aged about 41 years, House-wife,
R/o Thimmapura Village, Kadur Taluk. ... **Respondents**

**(R-2, 3, 5 Rep. By Sri. K.G.A. Advocate
R-4 - Absent)**

:: O R D E R ::

The petitioners have filed the present petition under Section 54 of the Code of Civil Procedure seeking the drawing up of a final decree in terms of the preliminary decree passed by this Court in O.S. No. 268/2013 dated 17.08.2017.



2. The brief facts of the petitioners' case are as follows:

The petitioners were the plaintiffs in O.S. No. 268/2013 on the file of this Court. They had instituted the said suit against the respondents/defendants seeking partition and separate possession of the petition schedule properties by allotting their legitimate share in the joint family properties and for delivery of separate possession by metes and bounds. After full contest, this Court, by its judgment and preliminary decree dated 17.08.2017, partly decreed the suit and declared that Plaintiff Nos.1 and 2 are jointly entitled to a **6/25th share** in the petition schedule properties, with a direction that their share be partitioned by metes and bounds.

3. It is the specific case of the petitioners that no appeal is pending against the said judgment and preliminary decree and that the decree has attained finality. Despite the passing of the preliminary decree, the respondents have neither effected partition nor delivered



possession of the petitioners' allotted share. As the petitioners have been unable to enjoy the fruits of the decree, they have filed the present petition under Section 54 of the Code of Civil Procedure seeking the drawing up of a final decree by effecting partition of the petition schedule properties by metes and bounds and by putting them in separate possession of their lawful share.

4. In response to the notice, Respondent Nos. 2, 3 and 5 entered appearance through counsel. However, they did not file any statement of objections. Respondent No.4, the 3rd party purchaser, despite due service of notice, remained absent and was accordingly matter was proceeded in her absence.

5. During the pendency of the present final decree proceedings, Respondent No. 1(a) died. Since the petitioners (Plaintiff Nos. 1 and 2) and Respondent Nos. 2,3 5 and 6 are the surviving legal heirs of the deceased Respondent No. 1, this Court, by its order dated 07.01.2023, reallocated the



shares consequent upon the death of Respondent No. 1 and modified the preliminary decree. Accordingly, **1/4th share** was allotted jointly to Plaintiff Nos. 1 and 2, **1/4th share** jointly to Defendant Nos. 2 and 3 (Respondent Nos. 2 and 3 herein), and **1/4th share** each to Respondent Nos. 5 and 6. The modified preliminary decree was accordingly drawn up and signed on 14.03.2025.

6. Thereafter, this Court appointed the Assistant Director of Land Records (ADLR), Kadur Taluk, as the Court Commissioner to prepare the scheme of partition in respect of **Item No. 1** of the petition schedule property. The Assistant Executive Engineer, PWD, Kadur, was also appointed as the Court Commissioner to prepare the scheme of partition in respect of **Item Nos. 2 and 3** of the petition schedule properties.

7. Pursuant to the said appointments, the Assistant Executive Engineer, PWD, Kadur, submitted his reports before this Court on **14.08.2025** and **02.04.2026** in



respect of Item Nos. 2 and 3. Likewise, the Assistant Director of Land Records (ADLR), Kadur Taluk, submitted the Commissioner's report on **20.02.2026** in respect of Item No. 1.

8. Despite sufficient opportunities having been granted, none of the parties have filed any objections to the Commissioner's reports. Consequently, the reports submitted by the Court Commissioners have remained unchallenged.

9. Heard arguments from the learned counsels appearing for the parties, perused the commissioner report, decree and entire materials available on records. Now the following points would arise for the determination of this Court.

1. Whether the petitioners have established that they are entitled to have the modified preliminary decree dated 14.03.2025 worked out by effecting partition of the petition schedule properties by metes and



bounds in accordance with the Commissioner's reports?

2. Whether the Commissioner's reports submitted by the Assistant Director of Land Records, Kadur Taluk, in respect of Item No.1 of the petition schedule property and by the Assistant Executive Engineer, PWD, Kadur, in respect of Item Nos.2 and 3 are liable to be accepted?

3. What order or decree?

10. The answer of this court for the above points are as follows:-

Point No.1	:	In the Affirmative,
Point No.2	:	In the Affirmative,
Point No.3	:	As per final Order for the following;

:: R E A S O N S ::

11. POINT NO.1 AND 2: These two points are interconnected, as the entitlement of the petitioners to seek a final decree depends upon the acceptance of the Commissioner's reports. Hence, they are taken up together for common discussion in order to avoid repetition.



12. The records disclose that the petitioners, who were the plaintiffs in O.S. No.268/2013, instituted the suit seeking partition and separate possession of their share in the petition schedule properties. Upon full-fledged trial, this Court, by its judgment and preliminary decree dated **17.08.2017**, partly decreed the suit and declared that Plaintiff Nos.1 and 2 were jointly entitled to **6/25th share** in the suit schedule properties.

13. Subsequently, during the pendency of the present final decree proceedings, Respondent No.1(a) died. Since the petitioners and Respondent Nos.2, 3, 5 and 6 are the surviving legal representatives of the deceased, this Court, by order dated **07.01.2023**, reallocated the shares consequent upon the death of Respondent No.1(a) and modified the preliminary decree. In pursuance thereof, a **modified preliminary decree** came to be drawn and signed on **14.03.2025**, whereby Plaintiff Nos.1 and 2 were jointly



allotted **1/4th share**, Defendant Nos.2 and 3 jointly **1/4th share**, and Respondent Nos.5 and 6 jointly **1/4th share**.

14. It is not in dispute that no appeal has been preferred against the judgment and preliminary decree or the modified preliminary decree. Therefore, the modified preliminary decree has attained finality and has become binding upon all the parties.

15. A preliminary decree in a partition suit merely declares the rights and shares of the parties. Unless a final decree is drawn by effecting actual partition by metes and bounds and separate possession is delivered, the successful parties cannot enjoy the fruits of the decree. The very object of final decree proceedings is to translate the declaration made under the preliminary decree into an executable decree by dividing the properties in accordance with the shares declared therein. Therefore, once the preliminary decree has become final, the Court is duty-bound to take



necessary steps for effecting partition and passing a final decree.

16. In order to facilitate such partition, this Court appointed the **Assistant Director of Land Records, Kadur Taluk**, as the Court Commissioner for Item No.1 of the petition schedule property and the **Assistant Executive Engineer, PWD, Kadur**, as the Court Commissioner for Item Nos.2 and 3.

17. The Assistant Director of Land Records inspected Item No.1 of the schedule property, conducted local inspection, measured the property with reference to the revenue records and submitted a detailed report along with the sketch on **20.02.2026**, proposing a feasible mode of partition strictly in accordance with the shares declared under the modified preliminary decree.

18. Similarly, the Assistant Executive Engineer, PWD, Kadur, after inspecting Item Nos.2 and 3, submitted reports on **14.08.2025** indicating the mode of partition of the



respective properties and certifying that the proposed division is practical, convenient and capable of implementation.

19. The records further disclose that though sufficient opportunities were granted, none of the parties have chosen to file any objections to the reports. Even Respondent Nos.2, 3 and 5, who entered appearance through counsel, have neither challenged the reports nor disputed the mode of partition suggested therein. Respondent No.4, despite service of notice, remained absent and was placed ex parte.

20. This Court has carefully perused the Commissioner's report submitted by the **Assistant Director of Land Records (ADLR), Kadur Taluk**, along with the sketch and connected records. The records disclose that before undertaking the local inspection, the Commissioner had issued notices to all the parties concerned, thereby affording them an opportunity to remain present at the time of survey and measurement. Thus, the procedure adopted



by the Commissioner is in accordance with law and the principles of natural justice.

21. The Commissioner's report further reveals that **Item No.1** of the petition schedule property originally consisted of agricultural land measuring **5 Acres 32 Guntas (excluding 7 Guntas of kharab)** situated in **Survey No.58/1 of H. Thimmapura Village, Chowlahiriyuru Hobli, Kadur Taluk**. It is also noticed that though the partition suit was instituted in the year **2013**, during the pendency of the proceedings, in the year **2014**, the said Survey No.58/1 came to be subdivided by the Revenue Department into **Survey No.58/1 and Survey No.58/3**. Taking note of the subsequent subdivision, the Court Commissioner has rightly considered both the subdivided survey numbers while preparing the scheme of partition so as to give complete effect to the modified preliminary decree.

22. In respect of **Survey No.58/1**, the Commissioner has found that the land measures **4 Acres 1 Gunta**, of



which **9 Guntas is kharab**, leaving a cultivable extent of **3 Acres 32 Guntas** available for partition. After considering the nature, location and physical features of the land, the Commissioner has divided the property into convenient blocks corresponding to the shares declared under the modified preliminary decree. Accordingly, **Block No.1**, measuring **39½ Guntas (inclusive of kharab)**, has been allotted jointly to **Petitioner Nos.1 and 2**. **Block No.2**, measuring **1 Acre 2½ Guntas (inclusive of kharab)**, has been allotted jointly to **Respondent Nos.2 and 3**. Further, **1 Acre (inclusive of kharab)** has been allotted to **Respondent No.5**, and **39 Guntas (inclusive of kharab)** has been allotted to **Respondent No.6**.

23. Likewise, in respect of **Survey No.58/3**, measuring **2 Acres 5 Guntas**, the Commissioner has proposed allotment of **23 Guntas (inclusive of kharab)**, jointly to **Petitioner Nos.1 and 2**, **21 Guntas (inclusive of kharab)**, jointly to **Respondent Nos.2 and 3**, **20 Guntas** to



Respondent No.5, and 21 Guntas (inclusive of kharab),
to **Respondent No.6.**

24. Insofar as **Item Nos.2 and 3** of the petition schedule properties are concerned, the records disclose that both the properties are adjacent residential properties consisting of houses bearing **Property Sl.Nos.6 and 7,** situated at **H. Thimmapura Village, Chowlahiriyuru Hobli, Kadur Taluk.** For the purpose of effecting partition, this Court had appointed the **Assistant Executive Engineer, PWD, Kadur,** as the Court Commissioner.

25. The Commissioner, after issuing notice to all the parties, conducted local inspection of the properties, took note of the existing structures, physical features, dimensions, access to the properties and the feasibility of division, and thereafter submitted his reports dated **14.08.2025** along with the sketch proposing a practical mode of partition.



26. The report reveals that since Item Nos.2 and 3 are adjoining residential properties, the Commissioner has prepared a common scheme of partition by dividing the properties into **four convenient portions** each namely **Part-A, Part-B, Part-C and Part-D**, so as to give effect to the modified preliminary decree.

27. Accordingly, **Part-A** has been allotted jointly to **Petitioner Nos.1 and 2**, **Part-B** has been allotted jointly to **Respondent Nos.2 and 3**, **Part-C** has been allotted to **Respondent No.5**, and **Part-D** has been allotted to **Respondent No.6**. The allotments have been made keeping in view the convenience of enjoyment, existing structures, access to each portion and the equitable distribution of the properties among the sharers.

28. This Court has carefully examined the Commissioner's report and the accompanying sketch. The proposed division appears to be fair, practical and capable of implementation. The Commissioner has ensured that



each sharer is allotted a separate and identifiable portion corresponding to the shares declared under the modified preliminary decree.

29. A careful examination of the report and the accompanying sketch demonstrates that the Commissioner has effected the proposed partition after actual survey and measurement of the properties on the spot. The allotments have been made by taking into consideration the quality, location, accessibility and physical features of the lands so that each sharer receives his or her legitimate share as nearly as possible in terms of extent and value. Nothing has been placed before this Court to indicate that the Commissioner has acted arbitrarily or contrary to the modified preliminary decree.

30. Significantly, despite service of the Commissioner's report upon all the parties and despite granting sufficient opportunities, no objections have been filed challenging either the methodology adopted by the Commissioner or the



allotment of the respective portions. Consequently, the report remains uncontroverted. This Court finds that the scheme of partition prepared by the Assistant Director of Land Records is fair, practical and in strict conformity with the modified preliminary decree. Hence, the report in respect of **Item No.1 to 3** deserves to be accepted. Hence, **Point No. 1 is answered in the Affirmative.**

31. POINT NO.3:- In view of the above, I proceed to pass following;

:: ORDER ::

The petition filed by the petitioners under Section 54 of the Code of Civil Procedure is hereby **allowed**.

The Commissioner's Report dated **20.02.2026** submitted by the **Assistant Director of Land Records, Kadur Taluk**, in respect of **Item No.1** of the petition schedule property, together with the sketch annexed thereto, is hereby **accepted** and shall form part of this Final Decree.



The Commissioner's Reports dated **14.08.2025** and **02.04.2026** submitted by the **Assistant Executive Engineer, PWD, Kadur**, in respect of **Item Nos.2 and 3** of the petition schedule properties, together with the sketches annexed thereto, are hereby **accepted** and shall form part of this Final Decree.

The office is directed to draw up the **Final Decree** incorporating the allotments suggested in the Commissioner's report and the Commissioner's report and sketches as part of the decree.

The parties shall be entitled to seek delivery of possession of their respective allotted portions in accordance with law, if necessary.

Draw Final Decree accordingly.

No order as to costs.

*(Dictated to the Stenographer, typed by her on computer and corrected by me, then pronounced in the open Court on this day **30th day of June 2026**).*

(THAHAKALEEL K.A.)
C/c II Addl. Civil Judge & JMFC.,
Kadur.



ANNEXURE

List of witness examined on behalf of petitioner:- Nil-

List of documents marked on behalf of petitioner:- Nil -

List of witness examined on behalf of respondents:- Nil-

List of documents marked on behalf of respondents:- Nil-

**(THAHAKALEEL K.A.)
C/c II Addl. Civil Judge & JMFC.,
Kadur.**

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