

IN THE COURT OF THE CIVIL JUDGE & JMFC.,
SRINGERI

PRESENT: Sri. Sachin.D. B.A.,LL.B.,
Civil Judge & JMFC.,
Sringeri.

DATED THIS THE 09th DAY OF NOVEMBER 2021

F.D.P.NO:03/2019

BETWEEN :

S. Manjunath S/o Sheshagiri,
Age about 66 years, R/o Sarada Bagilu,
Vidyaranyaapura, Village,
Sringeri Post and Sringeri Taluk. *... Petitioner*

(By Sri. V. R. Natashekara, Adv.,)

AND :

Narasimha S/o Sheshagiri,
Aged about 85 years, R/o Sarada Bagilu,
Vidyaranyaapura, Village, Sringeri Post,
Sringeri Taluk and others *... Respondents*

(By Sri. H. R. Umesh Heggadde, Adv.,)

ORDERS ON I.A.No.3

The petitioner has filed the present application under order 6 rule 17 R/w section 151 of the CPC to include the property described in the application as petition schedule 'C' property in the present final decree proceedings.

2. In the affidavit annexed to the application the the petitioner deposed that he has well conversant with facts of the case and the respondent No.6 died on 26.11.2019. It is further deposed that property bearing old Sy.No.293 and new Sy.No.372, measuring 5 guntas, situated at Vidyaranyapura Village of Sringeri Taluk, had not included in the O.S.No.24/2013. Further, the said property had granted to his mother on 30.06.1983 and in the said property his mother has constructed house to an extent 35*40. Therefore, it is joint family property of the him and respondents and its assessments No.95/94 of Vidyaranyapura village. It is further deposed that while institution of the in O.S.No.24/2013, documents were not available and as such that property has not been included in the same. It is further deposed that her mother by name Duggamma died intestate on 15.01.1992. Hence, he and respondents are having equal share in the said property and as such aforesaid property has to be included in the present petition. Accordingly, prayed for allow his application.

3. The above application filed by the petitioner has been resisted by the respondents by filing objection statement. Wherein it is contented that, the property bearing Sy.No.293, measuring 5 guntas, situated at Vidyaranyapura had been granted to one Duggamma W/o Sheshagiri on 30.06.1983 and accordingly grant certificate also issued in her favour. It is further contended that during

the life time of said Duggamma, on 02.02.1986 her children namely S.Narashima, S. Krishnaswamy, S.Manjunatha, S. Subramanya were effected partition with respect to said property and accordingly they are in possession and enjoyment of their respective shares. As such, the question of including the aforesaid property to the present petition does not arise. It is further contended that after the partition S. Subramanya has relinquished his share in favour of the S. Narashima on 19.07.1988 for consideration of Rs.4,000/-. Accordingly, the respondent No.6 is in possession of the same. It is further contended that the property belongs to Duggamma has been already divided among the sharers and as such the said property need not to be included in the present petition. It is further contended the petitioner has filed the present application in order to harass the respondents and their family members. Therefore, it is prayed for reject the application filed by the petitioner with costs.

4. In view of the above revival contentions of the both parties, the following points arise for consideration.

1. ***Whether the petitioner has made out sufficient grounds to include the additional property in the present FDP proceeding?***

2. What order ?

5. Having heard both sides, the court scrutinized the application, affidavit, objection statement and other materials made available on record. Now, the finding of the court to the above points are as follows;

*Point No.1 : **In the Affirmative***

Point No.2 : As per the final order

for the following

REASONS

6. Point No.1 : The petitioner has filed the present final decree proceedings against the respondents to draw final decree in accordance with the preliminary decree drawn in O.S.No.24/2013. Further, the petitioner filed the present application under order 6 rule 17 read with section 151 of C.P.C to include the property bearing Sy. No.372, measuring 5 guntas, situated at Vidyaranyapura Village as petition schedule 'C' property. The petitioner in support of his contentions has produced the documents such as, certified copy of the Saguvali Cheet, M.R No.55/1998-99, Records of rights, Genealogy tree, Xerox copy of death certificate of the Smt. Duggamma. Demand register etc..

7. Admittedly, the petitioner being the plaintiff has filed O.S.No.24/2013 against the present respondents for the relief of partition and separate possession with respect to

properties bearing Sy.No.27 and 28 of the Sringeri Village. The said suit came to be decreed on 14.08.2019 and upon the said preliminary decree the petitioner has filed the present final decree proceedings. Thus, the property which sought to be included in the present petition was not subjected in the original suit proceedings. Hence, the petitioner is seeking to include the aforesaid property in the final decree proceedings as it was left out during the original suit proceedings.

8. It is the contention of the petitioner that the property bearing Sy.No.372 which sought to be included in the present final decree proceedings is granted to her mother by name Smt. Duggamma W/o Sheshagiri on 30.06.1983. The said aspects has not been disputed by the respondents in their objection statement. Documents produced by the petitioner also corroborates the petitioner contention. Therefore, it is admitted fact that the aforesaid property had granted to mother of the petitioner on 30.06.1983.

9. The respondents in their objections statement they have contended that the property which sought to be included in the present FDP petition has been already divided among the sons of the Smt. Duggamma on 02.02.1986 and they are in peaceful possession and enjoyment of their respective share and the respondent No.1

has relinquished the same in favour of the respondent No.6 on 19.07.1988 by receiving consideration of Rs.4000/-. Therefore, the property cannot be included in the present FDP petition. It is very relevant to note that, in O.S.No.24/2013 the court has declared the rights of the parties and drawn preliminary decree. Upon the said preliminary decree after adjudication actual partition has to be taken place in the final decree proceedings. Therefore, till final decree proceedings completed, it cannot be say that the suit has been completely disposed off. As such the present FDP proceedings is nothing but continuation of the suit in O.S.No.24/2013.

10. In this contexts this court relied upon the decisions reported in **(2014) 3 KCCR 2214 between Channaverappa Gowda V/s Renukappa Gowda and others and 2015 SCC onLine Kar 9475 Between Janaki V/s Lalitha and others.** Wherein the Hon'ble High Court of Karnataka by relying the decisions of the Hon'ble Apex Court it has been held that the final decree proceedings is nothing but continuation of the suit and therefore inclusion of the left out properties in the final decree proceedings is justified and proper. The aforesaid dictum laid down by the Hon'ble High Court, is aptly applicable to the present case on hand. Herein this case also the petitioner has filed the present application to include the property which left out in the original suit. Hence, the application for inclusion of the

property in the FDP proceedings is very much maintainable. It is pertinent to note that the contentions of the respondents as contended in their objection statement have to be decided while conducting enquiry on the property which sought to be included. Therefore, at this stage the aforesaid contention of the respondent does not survive for consideration. Hence, the petitioner has made out sufficient grounds to allow the application and to include the additional properties in the FDP proceedings. Accordingly, this court answer the point No.1 **in the Affirmative.**

12. Point No.2: In view of the above discussion on point No.1, this court proceed to pass following:

ORDER

The I.A.No.3 filed by the petitioner under order 6 rule 17 read with section 151 of C.P.C is hereby allowed.

Consequently, the petitioner is hereby permitted to amend the petition as made mentioned in the application within 14 days from the date of this order.

*(Directly dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in the open court on this the **09th day of NOVEMBER 2021, at Sringeri)***

Sd/-

(Sri.Sachin.D)

Civil Judge & JMFC.,
Sringeri.

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