

FDP.No. 3/2019

Case Called out. Learned Counsels on both sides present.

Learned Counsel for Respondent No.1 and 6(a to c) files memo stating that they have no objections to consider the 'C' schedule property as joint family property of the parties and to declare shares of parties in the 'C' schedule property.

Heard both sides.

For orders. Kept By.

CJ and JMFC: Sringeri.

ORDER

The main petition is filed seeking relief of drawing Final Decree for Partition on basis of Preliminary Decree passed by this Court in O.S No.24/2013. Subsequent to filing of the petition, the Petitioner as per I.A.No.III sought for adding of a new property which was not part of the preliminary decree with contention that the said property is also a joint family property of the Petitioner and Respondents which was inadvertently left out earlier and hence, with said contention, the property in 'C' schedule was sought to be added to the main petition and as per order dtd 09.11.2021, this Court had permitted the Petitioner to amend the petition and include the property as 'C' schedule property in the petition.

2. Subsequent to the said amendment, the case stood posted for enquiry to ascertain whether the said 'C' schedule property is also a joint family property of the parties. In this regard, the Petitioner was examined as PW1 and when the case stood posted

for cross examination of PW1, on the basis of application in I.A.No.IV filed U/O 26 Rule 9 r/w Section 151 of C.P.C by Respondent No.1, this Court had issued Commission Warrant to ascertain and find out as to who is presently in possession of the said 'C' schedule property. In pursuance of which, the Court Commissioner has filed his report dtd 23.01.2023. Now, the Respondent No.1 and 6(a to c) who were contesting against inclusion of 'C' schedule property, have conceded and shown their willingness to include 'C' schedule property in the petition and have contended that the justice would be served if all the properties i.e., 'A', 'B' and 'C' schedule properties are fairly divided among the sharers.

3. Since, the preliminary decree was drawn only in respect of schedule 'A' and 'B' properties and schedule 'C' property was subsequently added in this petition seeking final decree for partition, it is evident that, there is no preliminary decree in so far as schedule 'C' property is concerned and unless one is passed, the said property cannot be ordered to be divided among the sharers. I have perused the exhibits marked as per Ex.P1 to 12 and I am convinced the property in 'C' schedule is also a joint family property of the Petitioner and Respondents. Hence, there appears to be no impediment whatsoever to hold the 'C' schedule property as joint family property of the Petitioner and Respondents. That apart, as aforesaid, since the Respondent No.1 and 6(a to c) have had a change of mind in respect of 'C' schedule property and have contended that they have no objections for including the 'C' schedule property and added to that, the other Respondents have not appeared in this petition, there is no other legal hurdle in passing a

supplementary preliminary decree in respect of the 'C' schedule property which would help in effective adjudication of this petition.

4.It is well settled that where new property is allowed to be added in the final decree proceedings, the Court must pass consequential supplementary preliminary decree and that there is no restriction on the Court to pass as many supplementary preliminary decrees as found fit in the circumstances till the Final Decree is drawn. Applying the said ratio, there is no escape but to pass the following -

ORDER

It is hereby declared that the Petitioner who was the Plaintiff in the suit is entitled for 1/7th share also in the petition 'C' schedule property.

It is further declared that Respondent No.1, 2, 3 and 7 who were Defendant No.1, 2, 3 and 7 respectively in the suit are entitled for 1/7th share each also in the petition 'C' schedule property.

It is further declared that Respondent No.4 and 5 who were Defendant No.4 and 5 respectively in the suit are jointly entitled for 1/7th share also in the petition 'C' schedule property.

It is further declared that Respondent No.6 (a to c) who are the legal heirs of Defendant No.6 in the suit are jointly entitled for 1/7th share also in the petition 'C' schedule property.

Office is hereby directed to draw supplementary preliminary decree accordingly.

(Rahul Shettigar)
Civil Judge and JMFC:
Sringeri.

For Further Hearing on
I.A.No.VII.

Call on 28.05.2024.

CJ and JMFC: Sringeri.