

FDP. 06/2022

ORDER ON IA-1 and 2.

When the matter was posted for taking steps for drawing final decree, on 23-02-2023, the petitioner filed IA-1 U/o 26 R 13 R/w. Sec. 151 of CPC praying to appoint ADLR, Channagiri for making division in Item No. 1 to 14 of petition schedule properties by appointing him as C/C.

1. Along with IA-1, the petitioner filed IA-2 U/o 26 R 13 R/w. Sec. 151 of CPC praying to appoint Asst. Engineer, PWD, Channagiri as C/C to effect division in Item No. 15 petition schedule property.

2. In the affidavits annexed to the application, the petitioner stated that, she filed this petition for final decree for getting her half share in the suit schedule properties. For that, appointment of ADLR, Channagiri and Asst.Engineer, PWD, Channagiri are necessary as C/C to demarcate half share of the petitioner in the petition schedule properties and prays to allow the applications.

3. The R No.1 filed objections to both applications contending that, the respondents have preferred RFA No.1849/2022 and RFA No.1663/2022 before HHCK against the preliminary decree passed in O.S.No.21/2016 by this court. Both appeals are pending for

consideration. During pendency of the appeal proceedings, present applications are not maintainable and prayed to reject both applications.

4. The R No. 6 to 9 also filed separate objection statements contending that, both applications are maintainable since, this court decreed O.S.No./21/2016 declaring that, the Rg.Partition deed dt. 20-10-1958 is not binding on the share of the plaintiff. Aggrieved by the preliminary decree passed by this court, the respondents have preferred RFA No.1849/2022 and RFA No.1663/2022. This court not declared the Rg.Partition deed is null and void and virtually not touched the said point.

5. Pursuant to the Rg.Partition deed, the Lrs of deceased Nagappa are in possession and enjoyment of the properties fell to their share. It is settled position of law as well as principle of natural justice demands to hear the person who is in possession of the properties and the revenue records are standing in his name.

6. The Rg.Partition deed dt. 20-10-1958 being not challenged since more than 50 years without determining the ownership, the nature of the suit schedule properties and status of joint family b/w the parties, this court erroneously held that Rg. Partition deed dt. 20-08-1958 is not binding on the plaintiff. As such,

the claim of the petition is barred by the law due to laches. The Rg.Partition deed being executed in 1958 whereas, suit being filed in 2016. On these among other grounds, during pendency of RFA No.1849/2022 and RFA No.1663/2022, consideration of both applications are not warranted and prays to dismiss both the applications.

7. Points that arise for consideration are,

1. Whether the petitioner made out sufficient grounds for appointing the ADLR, Channagiri and Asst.Engineer, PWD, Channagiri as C/C to demarcate half share of the petitioner as per preliminary decree is necessary ?
2. What order ?

8. Heard both parties perused the records. My answered to the above points are,

Point No. 1: In the affirmative.

Point No. 2: As per my final order for the following,

REASONS

9. Point No. 1: Present

petition is filed by the petitioner praying to pass final decree by demarcating her half share in the petition schedule properties as per preliminary decree passed in O.S.No.21/2016. The petitioner placed copy of preliminary decree passed in

O.S.No.21/2016 dt. 16-09-2022. On perusal of the decree, this court noticed that, this court declared half share in the suit schedule properties to the plaintiffs by meets and bounds and further declared that, the Rg. Partition deed dt. 20-10-1958 is not binding on the share of the plaintiff. This court decreed the suit in respect of Item No. 1 to 15 of plaint A schedule properties and dismissed the suit against the schedule B properties. In this petition, the petitioner shown Item No. 1 to 15 of plaint A schedule property.

10. On the day of appearance of respondents on 28-11-2022, the counsel for the R No. 6 to 9 filed memo with order copy of RFA No.1849/2022. Whereby, the HHCK stayed the matter for drawing final decree. The R No.1 and 6 to 9 in their respective objection statements contended about pendency of RFA No.1849/2022. The HHCK stayed for drawing final decree on the basis of preliminary decree passed in O.S.No.21/2016 but not stayed entire proceedings. Wherefore, there is no hurdel for considering both the applications. The other contentions raised by R No. 6 to 9 in their objection statements regarding the Rg. Partition deed dt. 20-10-1958 are not liable to be considered by this court since, this court considered all the contentions while passing preliminary decree. Whatever the contentions so urged by R No. 6 to 9 are nothing but the appeal grounds. And wherefore, this court does not feel to give any findings on those contentions. Since

beyond scope of the present applications. With these observations this court is of the considered view that, the petitioner made out sufficient grounds for considering the both the applications in her favour. Accordingly, this point is answered in the Affirmative.

11. Point No. 2: In view of foregoing reasons I proceed to pass the following,

ORDER

The IA-1 and 2 so filed by the petitioner U/s 26 r 13 R/w. Sec. 151 of CPC is hereby allowed.

In the result, the ADLR, Channagiri is hereby appointed as C/C to measure Item No. 1 to 14 of petition schedule properties and to propose feasibility of partition as per preliminary decree passed in O.S.No.21/2016 and to submit a detailed sketch followed by report as well.

The C/C's fee is fixed at Rs.5,000/-.

The Asst.Engineer, PWD Channagiri is hereby appointed as C/C to measure Item No. 15 of petition schedule property and to propose feasibility of partition as per preliminary decree passed in O.S.No.21/2016 and to submit a detailed sketch followed by report as well.

The C/C's fee is fixed at Rs.1,500/-.

Issue C/Ws if PF and C/C's fee being paid by the petitioner.

Await C/C's report by. 02-09-2024.

Sr. C. J. and JMFC, Cng.,