

IN THE COURT OF THE II ADDL. CIVIL JUDGE & J.M.F.C.  
HARIHAR

:: PRESENT::

SMT. VEENA KOLEKAR, *BA., LL.B.(Hons), LL.M.*

II Addl. Civil Judge & JMFC, Harihara.

Dated this the 2<sup>nd</sup> day of December, 2022

FDP.No.08/2020

Petitioner : Smt. Yashodamma

Vs -

Respondents : Sri.B.Bhairappa & Others

PARTIES TO I.A.NO.I

Applicant : Smt. Yashodamma

Vs -

Opponents : Sri.B.Bhairappa & Others

ORDER ON I.A.No.I FILED UNDER SECTION.151 OF CPC BY  
THE PLAINTIFF

The petitioner has filed an application U/Sec.151 of CPC to pass an order for the modification of share of the petitioner as  $\frac{1}{3}$ <sup>rd</sup> share in the petition schedule properties by allowing this application in the interest of justice and equity.

2. The petitioner has stated in the affidavit that, she has filed the suit for partition and separate possession of  $\frac{1}{3}^{\text{rd}}$  share in the petition schedule properties in O.S.No.34/2011. The said suit is decreed in favour of the petitioner by allotting  $\frac{1}{9}^{\text{th}}$  share in the petition schedule properties as per the preliminary decree.

3. Further she stated that, the Hon'ble Supreme Court has held that, the daughters are having equal share in the ancestral properties irrespective of the death of father in Civil Appeal. Dairy No.36601/2018 Vineetha Sharma Vs. Rakesh Sharma and others. The said ratio is applicable to her case also, hence, she is entitled for equal share i.e.,  $\frac{1}{3}^{\text{rd}}$  shares in the petition schedule properties instead of national share. Therefore, the said share allotted to her as per the preliminary decree is to be modified as  $\frac{1}{3}^{\text{rd}}$  share. If the application is not allowed the petitioner will be put to greater loss and legal injuries. On the other hand no hardship or legal injury caused to the respondents, Hence, she prays to allow the application on I.A.No.I.

4. On the other hand, the respondent No.1(g) has filed his objection to main petition and it is treated as objection to I.A.No.I and contended that, the application is not maintainable under law or facts. It is pertinent to note

here that the petitioner is entitled to  $\frac{1}{9}$ <sup>th</sup> share in the petition schedule properties as per this preliminary decree passed in O.S.No.34/2011.

5. Further contended that, the respondents are now ready to give the share of the petitioner to an extent of  $\frac{1}{9}$ <sup>th</sup> share in the suit schedule properties to the petitioner as per the preliminary decree in O.S.No.34/ 2011 and either the petitioner or the respondent have not preferred any appeal against the said judgment and decree passed in O.S.No.34/2011.

6. Further, the respondents contended that, the judgment of Hon'ble Supreme Court is not applicable to this case as the petition is based on preliminary decree in O.S. No.34/2011 and has attained finality as admitted by petitioner in his petition. Therefore, the share allotted to the petitioner in preliminary decree in O.S.No.34/2011 is not liable to be modified and mere filing of application U/Sec.151 of CPC, the judgment and decree can not be modified. Hence, the application U/Sec.151 of CPC is not maintainable and the same is liable to be dismissed. Hence, they prayed to reject the application.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

8. The points that arise for my consideration are,

1. Whether the applicant/petitioner has made out sufficient grounds to allow this I.A. filed U/Sec.151 of CPC?

2. What Order?

9. My findings to the above points are as under:

Point No.1 : In the Affirmative

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

--:: REASONS ::--

10 .POINT NO.1: This petition has filed by the petitioner for final decree proceedings in respect of the petition schedule properties against the Respondents.

The petitioner has filed suit against the Respondents for the relief of partition and separate possession in respect of suit schedule properties in O.S.No.34/2011, that suit was Decreed on dated 03-12-2019. As per preliminary decree the plaintiff is entitled to  $\frac{1}{9}$ <sup>th</sup> share in the suit schedule properties. The defendant No.1(a) to 1(g) are jointly entitled to the  $\frac{4}{9}$ <sup>th</sup> share and defendant No.2 is entitled to the  $\frac{4}{9}$ <sup>th</sup> share in the suit schedule properties. In that suit Court has allotted notional share to the plaintiff and defendant No.1(a) to 1(g), defendant No.2 who are petitioner and Respondent No.1(a) to 1(g), respondent

No.2 respectively in this final decree proceedings.

11. The respondents have contended that, the judgment of Hon'ble Supreme Court is not applicable to this case as the petition is based on preliminary decree in O.S. No.34/2011.

12. Here I would like to quote a judgment of the Hon'ble Apex Court passed in the case of Civil Appeal. Dairy No. 36601/2018 Vineetha Sharma Vs. Rakesh Sharma and others reported in (2020) 9 SCC 1)., wherein it is held that,

“(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. 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. “

As per the above cited judgment the Court can modify the share in final decree which is allotted in preliminary decree.

13. But as per the present scenario and Sec.6 of Hindu Succession Amendment Act, 2005, daughters are also coparceners. Hence, petitioner is entitled to  $\frac{1}{3}$ <sup>rd</sup> share in the suit schedule properties and respondent No.1(a) to (g) jointly entitled to  $\frac{1}{3}$ <sup>rd</sup> share and respondent No.2 is entitled to  $\frac{1}{3}$ <sup>rd</sup> share in the suit schedule properties. Therefore, I.A. deserves to be allowed. Hence I answer Point No.1 in the Affirmative.

14. POINT NO.2: For the above discussed reasons, I proceed to pass the following,

:: ORDER ::

I.A.No.1 filed by the plaintiff U/Sec.151 of CPC is hereby allowed.

Share of the petitioner and respondents modified as per the new amended Hindu Succession Act.

Office is directed to draw another preliminary decree regarding modification of shares of the parties.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and signed by me, then order pronounced in the open court on this the 2<sup>nd</sup> day of December, 2022)

Sd/  
(VEENA KOLEKAR)  
II Addl.Civil Judge & J.M.F.C,  
Harihara.