

KADG520005562012



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC., HONNALI.

Dated: This the 10th day of December 2024.

Present:

Sri. PUNYAKOTI S N.
B.A., LL.B.,
Addl. Civil Judge & JMFC.,
Honnali.

FDP No.10/2012

Petitioners : Gutti Kannamma Dead by Lrs.

Vs.

Respondents: Basappa Dead by Lrs., and others

Parties in IA.No.XVI

Applicant/
Respondents : Haladappa and others

Vs.

Opponents/
Petitioner : Gowramma and others

ORDER ON IA NO.16

The petitioners have filed an application U/o 26 Rule 13 r/w sec.54 of 151 CPC for appointment of Taluk surveyor attached to the Taluk office, Honnali Taluk for curving the share as per the order passed in RA No.30/1973 and RA No.31/1973 on the file of the Civil Judge at Shivamogga and RSA No.793/1975 and RSA No.794/1975 of Hon'ble High Court of Karnataka dated.28.02.1984.

2. In the affidavit annexed to the application the petitioners have contended that, their father Gutti Kannappa S/o Kannappa had 3 sons by name Basappa, Ramappa and Haladappa. His father filed a suit in OS No.519/69 after transferred to Munsif Court at Shikaripura it is renumbered as 122/72 for partition and separate possession with respect to suit schedule property the against Halappa and others. Contrary to it Siddamma W/o Haladappa filed a suit for Partition and Separate Possession in OS No.114/72. Both suits decreed on 30.11.1972. against the aforesaid Judgment and decree appeal filed by defendants in RA No.29/73 and 30/73. where in the decree of the trial Court was modified and against the Judgment and Decree in RA No.29/73 and 30/73 the appellants preferred RSA No.793/75 and 794/75 before the Hon'ble High Court of Karnataka and said the appeals for dismissed on 28.02.1984.

3. In the Judgement and decree of Hon'ble Prl.Civil Judge at Shivamogga his father Gutti Kannappa is entitled to have 5/12th share in all the suit property. Further submits that being the legal heirs and successors of Gutti Kannappa the petitioners are also parties in the present FDP. As per the orders of the trial Court and appellate Court they are together entitled to have 5/6th share in the suit property. Further submits that Siddamma W/o Haladappa who is petitionersin OS No.114/72 is entitled to have 1/6th share and petitioners in the petition are the legal heirs and successors to the estate of Siddamma. Hence they filed this application to appoint a survivor to devide the suit property for partition and separate possession.

4. Respondent No.1 to 3 and 7 to 14 submits no objection to the application. On the other hand respondent No.4 and 5 filed objections to the application and respondent No.6 Lrs filed memo adopting the objection filed by the respondent No.4 and 5 by denying the averments of the application and submits that suit schedule property is self acquired property of Grand father of respondent No.4 and 5. Further during the life time of 3 sons of Kannanna i.e., Ramanna, Gutti Kannappa and Haladappa have partitioned their ancestral properties orally. Land mark 10 acres 24 guntas including karab of 5 guntas in Sy.No.20/1 of Marikoppa Village is purely self acquired property of Ramanna S/o Kannanna purchased in the year 1935. Further submits that the affidavit sworn by Parameshwarappa S/o Late Guthyappa there is RSA No.793/1975 and 794/1975 in that RSA petitions the respondents No.4 and 5 are not parties and till date there is no notice served to them by Hon'ble High Court of Karnataka but the petitioners have colluded each other and filed false RSA petition before the Hon'ble High Court of Karnataka by suppressing the truth and other allegations in the affidavit are not admitted by the respondent No.4 and 5. Further submits that, petitioner and respondent No.1 to 3 are strangers to the land bearing sy.no.20/1. Petitioner and respondent No.1 to 3 are filed false suit in OS.No.114/1972. Hence the said application is not maintainable and liable to be dismissed.

5. Heard arguments on both side.

6. After going through the application with affidavit, points arise for my consideration are ;

1. Whether the petitioners have made out sufficient grounds to allow I.A.No.16?

2. What order ?

7. My answer to the above points are as under:

Point No.1 : In the Affirmative.

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

REASONS

8. **POINT NO.1:-** petitioners have filed present petition to carved out the shares allotted in the decree in OS No.114/1972.

9. On perusal of the petition partition suit in OS No.114/1972 on the file of Hon'ble Munsif Court at Shikaripura the same as been decreed by clubbing the OS No.122/1972 and passed common Judgment on 30.11.1972. Against the said Judgment appeals preferred in RA No.29/1973, RA.No.30/1973 and RA.No.31/1973. On merits RA.No.29/1973 and cross objections filed in RA.No.31/1973 are hereby dismissed. Preferred by Halappa, Bharmappa, Shanthamma and Eshwarappa. RA.No.30/1973 and RA.No.31/1973 are allowed and modified the shares of the parties. The parties approached the Hon'ble High Court of Karnataka by filing regular second appeal numbers 793 and 794 of 1975. Hon'ble High Court of Karnataka decided the appeals and allotted the area purchased by defendant No.3 and defendant No.4's husband to the share of the defendant No.1 Halappa.

10. It is the case of respondent No.4 and 5 that, petition

schedule properties are not ancestral properties in OS.No.114/1972 and present petition is not maintainable. The judgment passed by Hon'ble High Court of Karnataka in RSA.No.793 and 794 of 1975 dtd: 28-02-1984 is not maintainable. Further respondent No.6 Lrs. filed objection stating that, great grand father of respondent No.4 and 5 by name Kannanna had 3 sons by name Ramanna, Gutti Kannappa and Haladappa. During their life time all the 3 sons of Kannanna have partitioned their ancestral properties orally. Accordingly they are in separate possession and enjoyment over the ancestral properties. Further submits that, respondent No.4 and 5 are not parties in RSA No.793/1975 and 794/1975 of Hon'ble High Court of Karnataka and no notice served on them and for such other reasons prays to dismiss the petition.

11. The contention of the respondent No.4 to 6 that, the petition schedule properties are not the ancestral and joint family properties is cannot be considered in the present proceedings. Hon'ble Senior Civil Judge, Shimogga decided the matter in RA.No.29/73, RA.No.30/73 and RA.No.31/73. Further the Hon'ble High Court of Karnataka adjudicated the dispute between parties in RSA .No.793/75 and 794/75. Hence the contention of the respondent No.4 to 6 cannot be taken into consideration except to carve out the shares of the parties.

12. Petition schedule properties are landed properties and in order to carve out the shares of parties and to prepare the sketch it is just and necessary to allow the application. Hence, I proceed to pass the following:

//ORDER//

The IA No.XVI is hereby allowed.

The Taluk surveyor of Honnali taluk is hereby appointed as a court commissioner to effect commissioner work. The Court commissioner is hereby directed to divide the petition schedule properties as per decree and order passed in OS.No.114/1972, RA.No.30/1973 and RA.No.31/1973 on the file of Hon'ble Civil Judge, Shimogga and RSA.No.793/1975 and 794/1975 of Hon'ble High Court of Karnataka and prepare a sketch accordingly and submit report. The court commissioner fee is fixed Rs. 2000/- .

(Dictated to the stenographer on computer, typed by her, corrected by me and then pronounced in the open Court today the 10th day of December, 2024).

(Punyakoti S N)
Addl. Civil Judge & JMFC.,
Honnali.

Case calledout.

(Order pronounced in the open Court
vide separate order)

//ORDER//

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The petitioners are directed to deposit the commissioner fee and pay the PF and furnish the copies of decree and order passed in OS.No.114/1972, RA.No.30/1973 and RA.No.31/1973 on the file of Hon'ble Civil Judge, Shimogga and RSA.No.793/1975 and 794/1975 of Hon'ble High Court of Karnataka to the

commissioner for his reference at the time of execution of commissioner work.

Issue commissioner warrant, if PF paid.

ACJ., Honnali.