

IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE &
JMFC., BANTWAL.D.K

FDP 22-2007

Between:

Smt. Thimmakke & others ... Petitioners

Vs.

Smt. Divija Bhandary

and others

...Respondents

ORDERS ON I.A.Nos.61 & 62

The respondent Nos.119 & 120 have filed I.A.No.61 under Sec.151 of C.P.C. to carve out 5/181th share of defendant Nos.82, 88, 89, 150 and 151.

2. Petitioner/defendant No.88 sworn to an affidavit in support of I.A.No.61, wherein he has stated that, he is enjoying the share of defendant Nos.82, 119, 120, 150 & 151, but their share is not carved out and therefore, it is necessary to direct the Commissioner to carve out the share.

3. Petitioner has not filed any objections.

4. Applicant/petitioners have filed I.A.No.62 under Sec.152 of C.P.C. for amendment of orders on I.A.No.60 dated 05-03-2016 as well as Decree dated 19-12-1977.

5. Applicant/Petitioner No.12 has sworn to an affidavit, wherein he has stated that, opponent Jnanasubha V. Pakkala, who is the respondent No.38 in the above Final Decree Proceedings filed an application on 09-02-2016 under Sec.151 of C.P.C. seeking a direction to carve out 5/181 in the schedule properties in joint share for herself and her sisters namely, Jnanavani and Jnana Prabha who are arrayed as respondent Nos.36 and 37 and their late mother Hemavathi who was defendant No.15, and they are entitled to 4/181 share. There is a mistake in the preliminary decree and also order dated 05-03-2016. She has

stated that, applicant herself, and her two sister and late mother are only entitled to share and therefore, allotment of 5/181 share in the preliminary decree is not correct which requires to be rectified, or else, there will be loss to them. Accordingly, he has prayed for dismissal of the application.

6. Respondent Nos.38 and 39 have filed Objections stating that, application is not maintainable and same has been filed to protract the case. He has stated that, as per the Preliminary Decree in O.S.No.154/1971, they have been granted 5/181 share on behalf of Hemavathi and her three daughters, and there is no question of correcting the said Decree at this stage. Accordingly, they have prayed for dismissal of the application.

7. Heard.

8. The points that would arise for my consideration are:

1. Whether the respondent Nos. 119 & 120 have made out grounds to carve out their share as per I.A.No.61?
2. Whether the petitioners have made out sufficient grounds to amend the Decree and also Orders on I.A.No.60 dated 05-03-2016?
3. What Order?

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

Point No.1 : In the Affirmative.

Point No.2 : In the Negative.

Point No.3 : As per final order
for the following:

R E A S O N S

10. **POINT Nos.1 & 2:** For the sake of convenience I would like to deal them together.

As far as I.A.No.61 is concerned, respondent Nos.119 and 120 have claimed that, defendant Nos.82, 88, 89, 150 and 151 are entitled

to 5/181th share as per the Preliminary Decree and therefore, it requires to be carved out and it is necessary to issue direction to the Commissioner.

11. As far as I.A.No.62 is concerned, petitioners have sought for amendment of Decree dated 19-12-1977 and orders on I.A.No.60 dated 05-03-2016. On the basis of Preliminary Decree, this Court had passed orders on I.A.No.60 allotting 5/181th share. But as per the Preliminary Decree, there were three daughters and mother and they are entitled to 4/181th share. This Court does not know what is the basis for 5/181th share to Hemavathi and her daughters who are defendant Nos.15, 22, 20 and 21 in the Preliminary Decree. Since, the Decree has been passed in the year 1977, I am of the view that, at this stage, it would not be proper to amend the Preliminary Decree as it is hopelessly barred by time. Since on the basis of Preliminary Decree, Orders passed on I.A.No.60 and there is no question of amendment of the same. Law does not help those who are in sleep all these days, and made the Court to pass the orders and Court is not in a position to put an

end to litigation on account of various applications filed by the petitioners and respondents. Suit is of the year 1971 and Final Decree is of the year 1996 on the file of Civil Judge, Mangalore. Now after transfer to this Court, it was renumbered as FDP 22/07. In view of the above fact, I am of the view that, there are no grounds to allow the I.A.No.62 for amendment of Preliminary Decree and Orders on I.A.No.60. Hence, I answer Point No.1 in the affirmative and Point No.2 in the negative.

12. POINT No.3 : In view of my answer to the point Nos.1 & 2, as above, I proceed to pass the following:

ORDER

I.A.No.61 filed by the respondent No.119 & 120 under Sec.151 of C.P.C. is hereby allowed

The Commissioner is directed to carve out share of defendant Nos.82, 88, 89, 150 and 151 as per the Preliminary Decree by allotting 5/181 share.

I.A.No.62 filed by the
applicant/petitioners under Sec.152 of CPC
is hereby dismissed with cost of Rs.250/-.

(Dictated)

**Prl. Senior Civil Judge & JMFC.,
Bantwal, D.K.**

and right of Juliyana Monthero as per
page No.5.