

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC., PUTTUR**

Present :- Shri. Devaraj. Y.H B.A. L., LLB.
Addl. Senior Civil Judge & J.M.F.C., Puttur.

Dated this the 6th Day of SEPTEMBER-2025

F.D.P. No.04/2004

PETITIONERS: B. Subrahmanya Bhat dead by his LR's'
and others.

V/s

RESPONDENTS: B. Narayana Bhat and Others.

IA No.XIV

APPLICANT: B. Venkateshwara Bhat

V/s

OPPONENT: B. Subrahmanya Bhat dead by his LR's'
and others.

**ORDERS PASSED ON THE IA. No. XIV FILED BY THE
APPLICANT/RESPONDENT No.9 UNDER SECTION 151
OF CODE OF CIVIL PROCEDURE.**

The present IA filed by the Counsel for the Respondent No.9 and prays to order to delete the 'B' schedule properties from this final decree proceedings and to grant such other reliefs as this Court deems fit to grant under the circumstances of the case.

2. In support of the IA, Respondent No.9 filed affidavit and stated that 'B' schedule properties mentioned in the present petition seeking for the final decree are the Government lands. At the time of filing of the suit, there was a cashew cultivation in the 'B' schedule properties, after termination of the lease period, the said properties comprised in Sy.Nos 222 and 223/1 of Alankar village and they are the Government A.W. Lands, as such if it was allotted to any sharer under the final decree, such sharer will not get any right, title or ownership as the same is not available for partition and the sharers do not have any right over the same in view of change of the circumstances i.e., termination of lease.

3. It is stated that the land comprised in Sy.No. 169/1(P3) of Alankar vilage measuring to an extent of 2 acre 35 cents is granted to the respondent No.9 under Akrama-Sakrama scheme in proceedings No. NCR SR 87, 88/91-92. Further stated that the said granted property is the absolute property of the Respondent No.9 & the same not included in the preliminary decree. Further stated that the Government A.W Land abutting the land granted to the

Respondent NO.9 under Akrama Sakrama on its southren and western side also encroached by him, used to cultivate the same as well built a Farm house/Residential house in the said Government A.W. land. Further stated that the said property is in compact block with land granted to him.

4. It is stated that the Respondent No.9 cultivated the Government land in his individual capacity and it is in his possession and by constructing the house he is residing therein. Further stated that the Respondent apprehend that the petitioners and rest of the Respondents under the guise of seeking share in 'B' schedule properties are planning to get the above Government A.W. land and the land granted to him under the scheme of Akrama Sakrama, thus prays to exclude the 'B' schedule properties from the final decree proceedings in view of the facts and changed circumstances.

5. Counsel for Respondent No.7, 8, 10, 12, 13 and 14 submits no objections to allow the IA.

6. Counsel for the Petitioner and Counsel for the Respondent No.2 in their separate objections & contended that the application filed by the Respondent No.9 is false,

frivolous, vexatious and is not maintainable either in law or on facts. It is stated that the IA filed to delay the proceedings. Stated that the judgment and decree is passed 3-4 decade ago and the same is a considered Judgment and decree. Stated that inherent powers of the Court ought not to be invoked to amend a Judgment and Decree, further the Respondent No.9 has challenged the Judgment and Decree in an appeal and the same came to be dismissed, thus the decree merged with the Appellate Decree. Further contended that the lease right in respect of 'B' schedule properties is continuing as the Government has not ousted the Lessee or legal heirs. Stated that the apprehension of loss is premature and the said point is to be raised if at all at the division of proposal. By contending all these grounds, Counsel for the Respondent No.2 prays to dismiss the IA with cost.

7. Counsel for the Respondent No.8 filed the objections and admits that the 'B' schedule properties mentioned in the final decree proceedings are the Government A.W. lands and are not liable for partition.

8. It is stated that at the time of filing the original suit

for partition there was a lease for cashew cultivation in respect of 'B' schedule properties and the lease period is for 30 years, after the termination of the lease period, the 'B' schedule properties bearing Sy.Nos. 222 and 223/1 of Alankar village are Government A.W. lands and the said lands have not granted to anybody so far. Stated that if the said properties allotted to any sharer under the final decree such sharer will not get any right, title or ownership as the same is not available for partition and the sharers do not have any right over the same.

9. Further admits that the land comprised in Sy.No. 169/1(P3) of Alankar vilage measuring to an extent of 2 acre 35 cents is granted to the respondent No.9 under Akrama-Sakrama scheme in proceedings No. NCR SR 87, 88/91-92 and the said property not included in the preliminary decree.

10. Denied regarding encroachment of the Respondent No.9 of the lands on the Southern and western side of the Government A.W. lands abutting the land granted in favour of the Respondent No.9 in Sy. No.169/1(P3). Denied regarding construction of Farm

house, cultivation of the said land by the Respondent No.9. Further denied that the said Government land is a compact block with the land granted to the Respondent No.9. By contending all these grounds, Respondent No.8 prays to delete the properties bearing Sy.Nos. 222 and 223/1 of Alankar village, Puttur Taluk from the proceeding of final decree.

11. Perused the IA, Objections and rest of the material particulars available on record. Below mentioned points arisen for my consideration.,

P O I N T S

- 1) Whether the Respondent No.9 made out grounds consider the IA No.14 and grant the relief as prayed for?
- 2) What Order?

12. Heard Counsel for both parties. Perused the IA, Objections and other material particulars available on record. My findings to the above points is as hereunder.,

Point No.1 : In the Negative.

Point No.2 : As per the final order

for the following.,

REASONS

13. **Point No.1:** Heard Counsel for both parties. Perused the IA, objections and rest of the material particulars available on record.

14. The respondent No.9 herein, filed I.A.No.14, under Section 151 CPC to delete B Schedule Property from the Final Decree proceedings.

15. Counsel for the Respondent No.9 argued that 'B' schedule properties mentioned in the final decree proceedings are the Government A.W. lands and are not liable for partition. It is argued that at the time of filing the original suit for partition there was a lease for cashew cultivation in respect of 'B' schedule properties and the lease period is for 30 years, after the termination of the lease period, the 'B' schedule properties bearing Sy.Nos. 222 and 223/1 of Alankar village are Government A.W. lands and the said lands have not granted to anybody so far and if the said properties allotted to any sharer under the final decree such sharer will not get any right, title or ownership as the same is not available for partition and the sharers do not have any right over the same. Hence pray

to delete the 'B' schedule properties from the Final decree proceedings.

16. On the contrary, Counsel for the Respondent No.2 and the petitioner argued that inherent powers of the Court ought not to be invoked to amend a Judgment and Decree, Respondent No.9 has challenged the Judgment and Decree passed by this Court in an appeal and the same came to be dismissed, thus the decree merged with the Appellate Decree. Further argued that the lease right in respect of 'B' schedule properties is continuing as the Government has not ousted the Lessee or legal heirs. Argued further that the apprehension of loss is premature and the said point is to be raised if at all at the division of proposal. By contending all these grounds, Counsel for the Respondent No.2 prays to dismiss the IA with cost.

17. Counsel for the Respondent No.8 submitted their arguments that 'B' schedule properties mentioned in the final decree proceedings are the Government A.W. lands and are not liable for partition thus prays to delete the B schedule properties from this petition.

18. Admittedly this petition is filed seeking to draw final decree as per the preliminary decree passed in OS No.47/1976. Parties have appeared. Respondents filed objections.

19. On perusal of the records, it reflects, as per the order dated 18/01/2012, this Court directed the Respondent No. 10 to 14 to lead their evidence to substantiate their claim of partition and the point was formulated as “ Whether the Respondent No.10 to 14 are entitled for partition? If so, to what extent?. With respect to the said point is concerned, evidence of the R-13/RW1, R-10/RW2 was recorded & the matter was posted for hearing on the points formulated by this Court. Again on 8/8/2013, Respondent No.13 filed IAs seeking prayer to reopen and recall Rw-1 & for production of documents. Thereafter on 23/9/2013, Respondent No.14 filed IA seeking prayer to reopen her side evidence and the matter posted for the objections. The applications filed by Respondent No.13 and R-14 allowed on 07/03/2014 and Rw-1 was recalled to lead further chief examination. On 07/06/2014, Respondent No.14 led her evidence as Rw3 and on 22/09/2014 matter

was posted for Arguments on the points which was formulated for consideration that “ Whether the Respondent No.10 to 14 are entitled for partition? If so, to what extent?.

20. That on 11/11/2014 when the matter posted for to hear the arguments on the formulated point, the present IA No.14 came to be filed by the counsel for the Respondent No.9 with prayer to delete the ‘B’ schedule properties from the final decree proceedings.

21. Counsel for Respondent No.7 & 8, Counsel for Respondent No. 10, 12 & 14, Counsel for Respondent No.13 submits no objections to allow the IA.

22. Counsel for the Petitioner, Respondent No.2 submits their objections. Later Counsel for the Respondent No.8 filed objections. On 16/06/2015 this IA earlier dismissed by this Court on hearing the parties. Against the said orders, Respondent No.9 preferred WRIT PETITION NO.29464 OF 2015 (GM-CPC) before the Hon’ble High Court of Karnataka and the said Writ Petition came to be allowed and the order passed by this Court came to be set-aside with a direction that I.A.No.14 shall be reconsidered,

keeping in view the observations made supra and in accordance with law.

23. Accordingly again arguments on IA No. 14 was heard and this Court vide order dated 15/12/2015 disposed off the IA passing the order that the I.A.No.14 will be considered along with the merits of the main petition.

24. Aggrieved by the orders passed on IA No.14 on 15/12/2015, Respondent No.1 preferred Writ Petition No. 2431/2016 before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka disposed off the said Writ Petition on 05/09/2017 and passed the order.,

'In the circumstances, the trial Court is directed to take steps for enforcement of the preliminary decree granted in the suit on 30/01/1980 including the appointment of Court Commissioner in terms of Section 54 of CPC and on receiving the report of the Court Commissioner to consider I.A.No.14 and thereafter to pass orders in accordance with law.'

25. In this case, as per order dated 15/02/2018, Court Commissioner was appointed to divide the petition schedule properties with the assistance of Taluka Surveyor and directed him to submit the report. As per the direction of this Court, Court Commissioner submitted his Interim Commissioner Report by got dividing the properties which including 'B' schedule properties as per the preliminary decree passed by this Court dated OS No.47/1976.

26. Respondent No.2, Respondent No.5, Respondent No.8, Respondent No.9, Respondent No.10, 12, 13 & 14 have filed their objections to the interim commissioner's report.

27. Perused the Judgment and Decree passed in OS No.47/1976. In OS No.47/1976, Issue No.3 was framed & the is extracted herein below.,

' Whether defendant No.1 proves that the lease granted by the Government in respect of the B Schedule properties are only his self acquired properties and not partible properties? '.

28. In OS No. 47/1976, Issue No.3 was heard on merit & decided answering in No. Thus the Court in OS No.47/1976 has decided that the lease granted by the Government in respect of the B Schedule properties are not the self acquired properties of Defendant No.1 and they are also the partible properties between the members of the joint family.

29. In OS No.47/1976, the Civil Judge Court, Puttur has already decided that the 'B' Schedule properties are also the partible properties in between the members of the joint family. Now Respondent No.9 came up with a contention that the said properties are not the partible properties, and they are the Government A.W lands as such they have to be deleted from the proceedings of the final decree.

30. There is no dispute with regarding to the factual aspects that petition 'B' schedule properties are the Government A.W. lands and in OS No.47/1976 it has been concluded that the said properties were also partible properties amongst the joint family members. The said finding given by the Civil Judge Court, Puttur in OS No.

47/1976 has not been reversed or varied.

31. Admittedly the lease period granted in favour of defendant No.1/B.V. Venkataramana Bhat on behalf of the joint family was expired. Respondent No.8 or Respondent No.9, failed to produce any documents in order to substantiate that after completion of thirty years, the leased 'B' schedule properties have been taken back to the possession of the Government from the custody of the parties to this petition.

32. Moreover, the Government authorities have not issued any notice to the parties to this petition directing them to hand over the possession of the 'B' schedule properties or not taken any coercive steps for to recover the possession of the 'B' schedule properties stating that the lease period has been expired. Thus it can be inferred that the possession of the 'B' schedule properties still with the members of joint family who are the parties to this petition. Till this period since the Government authorities have not taken steps to recover the possession of the 'B' schedule properties after the expiration of Thirty years i.e., from dated 18/04/1988, this Court opines that even-though

there is no dispute that the petition 'B' schedule properties are the Government A.W lands, they are partible properties to the parties to this petition as per the preliminary decree passed in OS No.47/1976, as such no change of circumstances arisen to delete the 'B' schedule properties from this final decree proceedings as contended by the Respondent No.9. With all these discussion this Court opines that the Respondent No.9 not made out grounds to consider their IA and to grant the relief as prayed for, hence I proceed to answer Point No.1 in the Negative.

33. Point No.2: For the reasons as discussed in Point No.1, I proceed to pass the following.,

ORDER

IA No.14 filed by the
Applicant/Respondent No.9 is hereby
dismissed. Parties to bear their own
cost.

(Dictated to the Stenographer online, typed by her and print out taken, thereof corrected, signed and then the order pronounced by me in open court on this the 6th day of September 2025)

(Devaraj Y.H.)
Addl. Sr.Civil Judge &
JMFC, Puttur, D.K