

KADK400000212024



Presented on : 12.01.2024
Registered on : 16.01.2024
Decided on : 04.07.2026
Duration : 02y/05m/22days

IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.,
AT : SULLIA, D.K.
PRESIDED OVER BY : TATTANDA DAMAYANTI SOMAYYA,
B.A.,LL.B.,

**Senior Civil Judge & JMFC,
Sullia, D.K.**

Dated on this 4th day of July 2026

F.D.P. No.1/2024
[O.S.No.7/2022]

PETITIONER : **1. SRI. SURESH**
PLAINTIFF S/o. Monappa Gowda
Aged 51 years,
R/o: Ambekallu, Halemajalu,
Nadugallu Post, Nalkoor Village,
Sullia Taluk.

-V/s-

RESPONDENTS : **1. SMT. KAVERAMMA- DEAD.**
DEFENDANTS W/o. Monappa Gowda,
Aged about 87 years,
R/o: Ambekallu, Halemajalu,
Nadugallu Post, Nalkoor Village,
Sullia Taluk.

2. Smt. Meenakshi
W/o Late Prakash

Aged about 60 years
R/o. Kudumundooru,
Balugodu Village,
Sullia Taluk.

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Petitioner Rep. By : Sri.Betta P Ishwara Bhat., Advocate,
Respondents Rep. By : Sri.Mahesh N., Advocate
.....

ORDERS ON MAIN PETITION
DELIVERED ON 04.07.2026

The petitioner has filed this petition U/O XX Rule 12 and Sec.54 of CPC and prayed this Court to divide and allot his ½ share in the plaint 'A' and 'B' schedule properties, described in the decree.

'A' SCHEDULE

Immovable properties situated in Nalkoor Village, Sullia Taluk, and comprised in

Item No.	Sy. No.	Extent	Assessment Rs. Ps
1.	132/2C2	0.46 Acres	0.11

'B' SCHEDULE

Immovable properties situated in Nalkoor Village, Sullia Taluk, and comprised in

Item No.	Sy.No.	Extent	Assessment Rs. Ps
1.	132/3A4	1.18 Acres	0.27
2.	132/2D	0.36 Acres	0.09

2. After institution of this petition, this Court issued notices to the respondents. The respondent No.1 and 2 appeared through their counsel but, they did not file their objections to the main petition.

3. During the pendency of this petition, the respondent No.1, the mother of petitioner and respondent No.2 died. The petitioner and respondent No.2 are the only legal heirs of deceased respondent No.1. Hence, as per order dated: 12.11.2024, a supplementary preliminary decree was passed allotting $\frac{1}{2}$ shares each to the petitioner and respondent No.2.

4. In order to divide the decree schedule properties by metes and bounds, this Court appointed the Tahasildar, Sullia, as Court Commissioner and he was directed to hold local inspection, measure and divide the properties as per the supplementary

preliminary decree and submit his report. Accordingly, the Court Commissioner held local inspection, measured the properties and divided the same by metes and bounds and filed his report.

5. In spite of granting sufficient time, neither the petitioner nor the respondent No.2 filed their objections to the commission report. However, the petitioner filed memo stating that, he has constructed a house by investing his hard earned money and the respondent No.2 is in possession of that house property and hence, he has no objections to allot that house to the share of respondent No.2 in turn the respondent No.2 be ordered to clear the loan availed from Primary Agricultural Co-Operative Society, Guthigar or he be compensated the value of the house by increasing the extent of property to his share. In spite of taking many adjournments, the respondent No.2 has not filed her objections to the memo filed by the petitioner.

6. In order to substantiate his contentions, the petitioner got examined himself as PW.1 and got marked Ex.P.1 to 3 documents.

7. I have heard the arguments of the petitioner on main petition. In spite of giving several opportunities, the respondent No.2 has not canvassed her arguments on merits. Hence, the arguments of respondent No.2 is taken as not canvassed.

8. On the basis of contentions taken by the petitioner in his petition, the following points arise for my consideration:

1. Whether the petition filed by the petitioner U/O. XX Rule 12 & Sec.54 of CPC is fit to be allowed?

2. What order?

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

Point No.1 : In affirmative

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

REASONS

Point No.1:

10. On the basis of the preliminary decree passed by this Court in O.S.No.7/2022, the petitioner has filed this petition to draw final decree. O.S.No.7/2022 was filed by the petitioner herein seeking the relief of partition. On 24.11.2023, this Court decreed the suit of the plaintiff/petitioner and declared that he is entitled to 1/3rd

share in suit 'A' and 'B' schedule properties. During the pendency of this petition, the respondent No.1, the mother of petitioner and respondent No.2 died. The petitioner and respondent No.2 are the only legal heirs of deceased respondent No.1. Hence, as per order dated: 12.11.2024, a supplementary preliminary decree was passed allotting $\frac{1}{2}$ shares each to the petitioner and respondent No.2 in decree schedule properties.

11. This Court appointed the Tahasildar of Sullia as Court Commissioner to divide the suit schedule properties by metes and bounds as per the supplementary preliminary decree. Accordingly, the commissioner's warrant was issued. The Court Commissioner by issuing prior notices to both the parties held local inspection on 27.11.2024, measured the property, partitioned the suit schedule properties by metes and bounds and filed his report.

12. At the time of visit of the Court Commissioner to the schedule properties, the petitioner, respondent No.2 and their respective counsels were present at the spot. In the presence of all these persons, the Court Commissioner executed the commission

warrant. As per the supplementary preliminary decree, the petitioner is entitled to $\frac{1}{2}$ share in the suit schedule properties. As per the supplementary preliminary decree, the Court Commissioner was bound to divide the schedule properties and he was to carve out $\frac{1}{2}$ share of the petitioner from 0.46 acres of land in Sy.No.132/2C2, 1.18 acres of land in Sy.No.132/3A4 and 0.36 acres of land in Sy.No.132/2D of Nalkoor village, Sullia taluk, Dakshina Kannada District.

13. The Court Commissioner measured the entire property i.e. the landed properties as well as the house property. The Court Commissioner has submitted his report along with a sketch drawn by him at the spot, which is considered as part of the record. As per the said sketch, the Court Commissioner has bifurcated or separately shown the properties, which has to be allotted to the shares of the petitioner and respondent No.2.

14. The PW.1 in his evidence has stated that, he has constructed a house by investing his hard earned money and the respondent No.2 is in possession of that house property and hence, he has no

objections to allot that house to the share of respondent No.2 in turn the respondent No.2 be ordered to clear the loan borrowed by him from Primary Agricultural Co-Operative Society, Guthigar or he be compensated the value of the house by increasing the extent of property to his share.

15. The PW.1 has produced statement issued by Primary Agricultural Co-Operative society, Guthigar and tax paid receipt. They are marked as Ex.P.2 and 3 respectively. By perusing Ex.P.2, it appears that, the petitioner borrowed agriculture loan of Rs.3,75,000/- in the year 2021 from Primary Agricultural Co-Operative Society, Guthigar. As on 03.05.2025, he was due to repay Rs.3,73,520/- to the society. As per Ex.P.3, the PW.1 has paid tax towards the house property, which stands in his name.

16. Though, the PW.1 contended that, he has invested his hard earned money and borrowed loan from Primary Agricultural Co-Operative Society, Guthigar, for constructing RCC house in the decree schedule property, he has not produced any documents to substantiate his version. From the contents of Ex.P.2, it can be

gathered that, the PW.1 in his individual capacity borrowed loan from the society. But, there is no cogent evidence on record to hold that, the loan borrowed from the society was utilized for the construction of that house.

17. Therefore, now the PW.1 cannot say that, the house be allotted to the share of respondent No.2 and in turn the respondent No.2 be ordered to clear the loan borrowed by him from Primary Agricultural Co-Operative Society, Guthigar or he be compensated the value of the house by increasing the extent of property to his share.

18. The Court Commissioner has carved out two shares in decree schedule properties and it has been separately mentioned/described in the sketch vide blue and pink colors. The Court commissioner has equally demarcated 2 shares allotting 93 cents each in the schedule properties. As per the sketch described as 'A' schedule property shown in 'Blue colour' in Court commissioner's report consists of 25 cents of land in Sy.No.132/3A4, 46 cents of land in Sy.No.132/2C2 and 22 cents of

land in Sy.No.132/2D of Nalkoor village, which has 350 areca trees and 20 coconut trees.

19. As per the sketch described as 'B' schedule property shown in 'Pink Colour' in Court commissioner's report, consists of 93 cents of land in Sy.No.132/3A4 of Nalkoor village, which has 50 areca trees and 10 coconut trees along with a house. The Court Commissioner was directed to divide the schedule properties as per the supplementary preliminary decree passed in O.S. No.7/2022.

20. While conducting survey, the Court Commissioner has considered the location of the property, topography of the land and possession of the parties. The Court Commissioner has produced the sketch prepared by him in the spot. Accordingly, after completing his survey work, the Court Commissioner filed his report. None of the parties have filed their objections to Court commissioner's report.

21. The Court Commissioner has visited the schedule properties, divided them by metes and bounds as per the supplementary preliminary decree. Thus, it is clear that the report of the Court Commissioner is in accordance with law and supplementary preliminary decree. At the time of passing preliminary decree, this Court has held that, the suit schedule properties are joint family properties. Hence, now the petitioner cannot say that, the house property can be allotted to the share of respondent No.2, in turn the respondent No.2 be ordered to clear the loan borrowed by him from Primary Agricultural Co-Operative Society, Guthigar or he be compensated the value of the house by increasing the extent of property to his share.

22. While allotting the share to the petitioner, the Court has to see that, 350 areca trees and 20 coconut trees derive more income than the other share, which consists of 50 areca trees and 10 coconut trees. The PW.1 did not produce Ex.P.2 and 3 documents at the time of evidence in original suit. There is no convincing evidence on record to hold that, the loan borrowed by PW.1 from primary

Agricultural Co-Operative Society was utilized by him for the construction of the house. Hence, the relief sought by the petitioner under memo dated: 21.04.2025 cannot be granted. Thus, the proposed allotment of shares by the Court Commissioner is in accordance with law. Under these circumstances, it is a fit case to draw the final decree on the basis of Court Commissioner's report and allot the share of the petitioner in decree schedule properties. Accordingly, I answer point No.1 in affirmative.

Point No.2: For the aforesaid reasons I proceed to pass the following:

ORDER

The petition filed by the petitioner U/O XX Rule 12 and Sec.54 of CPC is hereby allowed.

Court Commissioner's report is accepted. The petitioner is allotted with 'A' schedule property shown in 'Blue colour' in Court commissioner's report, which consists of 25 cents of land in Sy.No.132/3A4, 46 cents of land in Sy.No.132/2C2 and 22 cents of land in

Sy.No.132/2D of Nalkoor village, which has 350 areca trees and 20 coconut trees.

As per the sketch described as 'B' schedule property shown in 'Pink Colour' in Court commissioner's report, consists of 93 cents of land in Sy.No.132/3A4 of Nalkoor village, which has 50 areca trees and 10 coconut trees along with a house is allotted to the share of respondent No.2.

Office is hereby directed to draw the final decree by collecting requisite non judicial stamp papers.

The Court Commissioner's report and sketch shall be treated as part and parcel of the final decree.

No orders as to costs.

04.07.2026

**[TATTANDA DAMAYANTI SOMAYYA]
SENIOR CIVIL JUDGE & JMFC,
SULLIA, D.K.**

ANNEXURE

WITNESSES EXAMINED FOR THE PETITIONER:

PW.1 : Suresh

EXHIBITS MARKED FOR THE PETITIONER:

Ex.P.1 : Certified copy of decree in O.S.No.7/2022

Ex.P.2 : Statement issued by primary agriculture
co-operative society

Ex.P.3 : Tax Receipt

WITNESSES EXAMINED FOR THE RESPONDENTS:

Nil

EXHIBITS MARKED FOR THE RESPONDENTS:

Nil

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Dictated on : 03.07.2026

Transcribed on : 03.07.2026

checked on : 04.07.2026

Signed on : 04.07.2026

[TATTANDA DAMAYANTI SOMAYYA]
SENIOR CIVIL JUDGE & J.M.F.C
SULLIA, D.K.

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