

Heard advocate for Respondent No.2 and petitioner on I.A. No.1 under Sec.151 of C.P.C. This application is filed by Respondent No.2 stating that in O.S. No.147/2008 the present petitioner Eshwarappa admitted about the partition. Hence, this petition for final decree is not maintainable. Perused the order passed in O.S. No.147/2008, in said suit order on issue No.2 was passed by the Court by holding that the suit of the plaintiff was not maintainable in view of Sec.11 of C.P.C. In para No.20 of the said order the said Court has directed both parties to seek final decree proceedings in view of the judgment in O.S. No.189/1978.

Now, the defendant No.1 in O.S. No.189/1978 defendant No.5 Annapoornavva, defendant No.4 Basavannevva in said suit filed this petition. In said suit 1/7th share was granted to plaintiff (Gurappa). As per judgment of said suit all the children of Kalkappa i.e., 4 sons 2 daughters and wife of Kalkappa entitle for equal share i.e., 1/7th each. Hence, the application filed by Respondent No.2 is not at all maintainable and accordingly it is rejected.

Advocate for Respondent No.2 argued that daughters cannot claim share

in tenancy lands. But, that issue cannot be decided in FDP unless the decree of this Court passed in O.S. No.189/1978 is set aside by appellate Court.

AGW advocate filed vakalath for Respondent No.1(g) by taking NOC from STT.

Petitioner No.1 claiming that his sister Annapoornavva executed Will in his favour. Hence, to decide the legality of the Will petitioner prays time to lead evidence. Time is granted, by:07.09.2022.

Prl. Sr. Civil Judge & JMFC,
Hubballi.