

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
KALAGHATAGI**

PRESENT

SRI. RAVINDRA L. HONOLE,
B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE AND JMFC, KALAGHATAGI

DATED THIS 22ND DAY OF JULY 2026
FDP No.11/2023

PETITIONER:

1. Virupaxappa s/o Rayappa Olekar,
Age: 56 years, Occ: Agriculture,
R/o Hirehonnihalli, Tq: Kalaghatagi,
Dist: Dharwad.

(Sri.S.R.H, Adv)

Vs

RESPONDENTS:

1. Jyoti D/o Bvasavaraj Olekar,
Age: 20 years, Occ: Household work,
R/o Ningavva Sonnad @ Mindinamani
Siddeshwar Nagar, Sainagar road, Unakal
cross, Hubballi.
2. Shivakumar S/o Bvasavaraj Olekar,
Age: 11 years, Occ: student,
R/o Ningavva Sonnad @ Mindinamani
Siddeshwar Nagar, Sainagar road, Unakal
cross, Hubballi.

(Respondent No.1 and 2 are minors R/by their
natural mother minor guardian respondent
No.3)
3. Smt. Manjula W/o Bvasavaraj Olekar,
Age:41 years, Occ: Household work,
R/o Ningavva Sonnad @ Mindinamani
Siddeshwar Nagar, Sainagar road, Unakal
cross, Hubballi.

4. Basavaraj @ Basavanneppa s/o Rayappa
Olekar, Age: 47 years, Occ: Agriculture,
R/o Hirehonnihalli, Tq: Kalaghatagi,
Dist: Dharwad.

(R-1 Exparte)
(R-2,3-Sri. S.S.C., Adv)
(R-4 Sri. K.B.G., Adv)

ORDER

The petitioner/defendant No.2 has filed this petition u/o 20 rule 18 r/w 151 of CPC to draw final decree as per preliminary decree passed in OS No.78/2015 dated 29.07.2016.

2. It is the case of the petitioner that respondent No.1 and 2 represented by their minor guardian mother respondent No.3 filed O.S.No. 78/2015 on the file of this court for partition and separate possession. The suit was decreed allotting 1/6th share each to the respondent No.1 and 2 in suit schedule properties. Therefore, respondents have filed FDP No.98/2016 and got appointed court commissioner who has demarcated properties as per preliminary decree and allotted $\frac{1}{2}$ share to the respondent

No.1 and 2 and $\frac{1}{2}$ share to the petitioner and respondent No.4. It is submitted that the petitioner has challenged the said order in Civil Misc. No.11/2022 and same was allowed rejecting commissioner report and ordered for permission to file fresh petition for final decree. Therefore, he prays for allotting his $\frac{1}{2}$ share in the petition schedule properties as per preliminary decree.

3. After issuance of notice respondent No.2 to 4 appeared through their counsel. Respondent No.1 is remained absent. The respondents have not chosen to file objection to main petition.

4. The petitioner who is defendant No.2 in O.S.No.78/2015 has challenged the FDP No.98/2016 in Misc. No.11/2022. It is contended that defendant No.1 is having $\frac{1}{2}$ share and he was having $\frac{1}{2}$ share in the suit schedule properties. The plaintiff No.1 and 2 and defendant No.1 together are entitled to 1/3rd share each i.e., 1/6th share each. Court commissioner has allotted to the plaintiffs and $\frac{1}{2}$ share to the defendants. After considering

the material placed on record this court has set aside the order passed in FDP No.98/2016 dated 22.09.2018 and rejected the commissioner order and ordered for fresh final decree. Accordingly, the petitioner/defendant No.2 has filed the present petition.

5. During pendency of case petitioner has filed application for allotting share of petitioner and respondent No.4 as per preliminary decree passed in O.S.No.78/2015 and they are ready to pay the court fee in respect of their share. As per order dated 09.01.2026, they are permitted to make payment of court fee.

6. The court commissioner was appointed for effecting partition in the suit schedule properties by metes and bounds. Accordingly, court commissioner was appointed and he got issued notice to the parties, measured the properties and prepared panchanama and submitted report with hand sketch maps.

7. Heard the arguments.

8. The points arise for my consideration are as under:

1. Whether the division made by the Court commissioner is equitable and same is to be allotted to the share of respective parties?

2. What order?

9. My findings on the above points are as under:

POINT NO.1 : In the affirmative

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

REASONS

10. **POINT No.1** : The petitioner is the defendant No.2, respondent No.4 is defendant No.1. Respondent No.1 and 2 are the plaintiffs who are represented by their natural mother respondent No.3/defendant No.3, in O.S.No. 78/2015. As per judgment and decree dated 29.07.2016 respondent No.1 and 2 are entitled to 1/6th share in the share of their father respondent No.4 who is having $\frac{1}{2}$ share in the suit properties. Petitioner is the brother of respondent No.4 and they are entitled to equal $\frac{1}{2}$ share in the suit schedule properties by metes and bounds. Accordingly, decree was modified and share was allotted to the petitioner and respondent No.4.

11. The judgment and decree and modified order passed by this court has not been challenged by the respondents. This court has not received intimation about appeal or stay order from the appellate court. Therefore, it can be said that the judgment and decree attained finality and there is no hurdles to proceed with the matter.

12. Accordingly, court commissioner was appointed to carve out the share of the parties as per preliminary decree. Taluka Surveyor/court commissioner was appointed to carve out share of parties in respect of schedule item No. 1 to 4 landed properties.

13. The court commissioner after issuing notice to the respective parties visited the spot and prepared panchanama and has made divisions as per the order of the court and made a proposal to allot the properties to the share of petitioner and respondents.

14. Learned counsel for petitioner filed memo stating that they have no objection to allot house property VPC No.17A to the respondents and the property purchased by

him in VPC No.90 is to be allotted to his share and they have no objection. It is further submitted that schedule 'C' R.S.No. 388/1B and D, R.S. No.388/1E measuring 1 acre 16 guntas out of which petitioners and respondents are entitled to 19 guntas wherein 9 guntas 8 annas in R.S.No.338/1B is to be allotted to the respondents and R.S.No.388/1E measuring 9 guntas 8 annas is to be allotted to the petitioners situated towards southern side. It is submitted that remaining extent of property belongs to purchasers who are not party to the suit and they have no right in the said properties.

15. I have also gone through the court commissioner report with hand sketch maps. The court commissioner has allotted share in schedule item No.1. Sy.No. 126/1 measuring 2 acre 19 guntas out of it block No.I measuring 16 guntas 8 annas allotted to plaintiff No.1/respondent No.1, block No.II measuring 16 guntas 8 annas allotted to plaintiff No.2/respondent No.2, block No.III measuring 16guntas 8 annas allotted to defendant No.1/respon-

dent No.4, block No.4 measuring 1 acre 9 guntas 8 annas allotted to defendant No.2/ petitioner.

16. Schedule item No.2. Sy.No. 19/2 measuring 9 acres out of it block No.I measuring 1 acre 20 guntas allotted to plaintiff No.1/respondent No.1, block No.II measuring 1 acre 20 guntas allotted to plaintiff No.2/respondent No.2, block No.III measuring 1 acre 20 guntas allotted to defendant No.1/respondent No.4, block No.IV measuring 4 acre 20 guntas allotted to defendant No.2/ petitioner.

17. In view of memo filed by the petitioner schedule item No.3 and 4 land bearing R.S.No.388/1B measuring 20 guntas, R.S.No.388/1E measuring 1 acre 16 guntas wherein petitioner and respondent No.1,2 and 4 are having right to an extent of 19 guntas only. Out of it southern side 9 guntas 8 annas in R.S.No.388/1B is to be allotted to the respondent No.1, 2 and 4 and R.S.No.388/1E measuring 9 guntas 8 annas situated towards southern side is to be allotted to the share of petitioner which will meet the ends of justice. House property VPC No.17/A is to be allotted to the

share of respondents. House property VPC No.90 belongs to petitioner and it is not the subject matter of suit property question of allotting does not arise.

18. The properties shown in the name of parties by the court commissioner in respect of schedule item No.1 and 2 and memo filed by the petitioner in respect of schedule item No.3,4 and house property are divisible and equitable as per preliminary decree and amicable settlement between Parties. The properties shown in the name of petitioner and respondent No.1,2 and 4 is to be allotted to their respective share. Hence, I answer the Point No.1 in the Affirmative.

19. **POINT No.2:** The Court commissioner report with sketch is accepted. Accordingly court proceed to pass the following:

ORDER

The petition filed u/o. 20 rule 18 of CPC is hereby allowed.

Schedule item No.1. Sy.No. 126/1 measuring 2 acre 19 guntas out of it block No.I measuring 16 guntas 8 annas allotted to plaintiff

No.1/respondent No.1, block No.II measuring 16 guntas 8 annas allotted to plaintiff No.2/respondent No.2, block No.III measuring 16 guntas 8 annas allotted to defendant No.1/respondent No.4, block No.4 measuring 1 acre 9 guntas 8 annas allotted to defendant No.2/ petitioner.

Schedule item No.2. Sy.No. 19/2 measuring 9 acres out of it block No.I measuring 1 acre 20 guntas allotted to plaintiff No.1/respondent No.1, block No.II measuring 1 acre 20 guntas allotted to plaintiff No.2/respondent No.2, block No.III measuring 1 acre 20 guntas allotted to defendant No.1/respondent No.4, block No.IV measuring 4 acre 20 guntas allotted to defendant No.2/ petitioner.

Schedule item No.3 and 4 land bearing R.S.No.388/1B measuring 20 guntas, R.S.No.388/1E measuring 1 acre 16 guntas wherein petitioner and respondent No.1,2 and 4 are having right to an extent of 19 guntas only. Out of it southern side 9 guntas 8 annas in R.S.No.388/1B is to be allotted to the respondent No.1, 2 and 4 and R.S.No.388/1E measuring 9 guntas 8 annas situated towards southern side is to be allotted to the share of petitioner.

House property VPC No.17/A is to be allotted to the share of respondents.

The hand sketch map produced by the court commissioner along with report dated 22.06.2026 in respect of schedule item No.1 and 2 is to be treated as part and partial of final decree.

Office to draw final decree after collecting necessary fees.

(Dictated to stenographer directly on computer, computerized by him, then corrected and pronounced by me in the open court on this **22nd day of July 2026**)

(R.L.HONOLE)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI