

**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 11TH DAY OF AUGUST 2026
FDP No.03/2021

PETITIONER:

1. Smt. Gourawwa @ Drakshayani w/o
Fakkirayya Chikkamath,
Age: 45 years, Occ: Household,
R/o Nelliharavi, Tq: Kalaghatagi,
Dist: Dharwad.
2. Smt. Sangawwa @ Gourawwa w/o
Mallayya Killedar,
Age: 42 years, Occ: Household,
R/o Dodwad, Tq: Bailhongal,
3. Smt. Girijavva w/o Adavayya Hiremath,
Age: 33 years, Occ: Household,
R/o Inamkoppa, Tq: Kundgol,
(Sri.S.C.Kulkarni Adv)

Vs

RESPONDENTS:

1. Mantayya s/o Gurupadayya Hiremath,
@ Ayyanavar, Age: 64 years, Occ: Agriculture,
R/o Malakankoppa, Tq: Kalaghatagi.
2. Sangayya S/o Mantayya Hiremath,
@ Ayyanavar, Age: 30 years, Occ: Agriculture,
R/o Malakankoppa, Tq: Kalaghatagi.

3. Gangavva D/o Gurupadayya Hiremath,
@ Ayyanavar, Age: 40 years, Occ: Household
& Agriculture, R/o Malakankoppa,
Tq: Kalaghatagi

(R-1 Sri. S.R.Hegde, Adv)

(R-2 Sri. V.R. Ganiger, Adv)

(R-3-Exparte)

ORDER

The petitioners/plaintiff No.1,2 and 4 have filed this petition u/o 20 rule 18 r/w sec. 54 of CPC to draw final decree as per preliminary decree passed in OS No.28/2017 dated 22.09.2018.

2. It is the case of the petitioners that themselves and respondent No.3 are the plaintiffs have filed O.S.No. 28/2017 on the file of this court for partition and separate possession. The suit was decreed allotting 1/10th share each in the suit schedule properties. It is submitted that respondent No.1 has preferred appeal against the judgment and decree passed by this court in R.A.No.17/2018 on the file of Hon'ble Principal District and Sessions Judge, Dharwad. The appeal was dismissed on 01.04.2023

modifying the decree of this court allotting 1/5th share each to the plaintiffs and defendant No.1. In spite of decree respondent No.1 is not ready to carve out share of the petitioners. Therefore, they pray for allotting their 1/5th share in the petition schedule properties.

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

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

5. Learned counsel for respondent No.1 filed objection to the commissioners report contending that commissioner report is not in accordance with law and survey norms. At the time of division of properties court commissioner has

not considered fertility of land and flow of water direction. He divided properties without whispering roads to enter the properties. The division made by the court commissioner is mathematical division and it is not fisible to cultivate the properties. The court commissioner has to divide the properties one side instead of shares in all the properties to each parties.

6. It is submitted that the commissioner report in respect of house properties is not correct. The commissioner has divided the properties in mathematical division and not considered possibility to enjoy the properties. The measurement of properties allotting to parties is 4 feet and 3.5 feet is not proper use and enjoy the properties. Therefore, the commissioner report cannot be accepted. Hence, prays for rejection of both the reports of both commissioners in respect of landed properties and house properties.

7. Learned counsel for petitioners submits memo stating that the petitioners could not trace out VPC

No.68/2A and 69/1B/2 i.e., item No.3 and 6 of schedule 'B' properties. Therefore, liberty is given to the work their remedy by filing separate petition.

8. Heard the arguments.

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

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

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

POINT NO.1 : In the partly affirmative

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

REASONS

11. **POINT No.1** : The petitioners are plaintiff No.1,2 and 4 and respondent No.3 is the plaintiff No.3, defendant No.1 and 2 are the respondent No.1 and 2. The petitioners and respondent No.3 have filed O.S.No.28/2017 on the file of this court for partition and separate possession. The suit was decreed on 22.09.2018 allotting 1/10th share each to the petitioners and respondent No.3 and 6/10th share to the respondent No.1. Aggrieved by the judgment

and decree passed by this court respondent No.1 has preferred appeal before the Hon'ble Prl. District and Sessions Judge, Dharwad in R.A.No.170/2018. The Hon'ble Appellate court dismissed the appeal on 01.04.2023, however, share of the parties has been modified allotting 1/5th share each to the plaintiffs and defendant No.1 i.e., petitioners and respondent No.1 and 3. Accordingly, decree has been got modified allotting 1/5th share to the parties. The judgment and decree passed by Hon'ble Appellate Court is attained finality. This court has not received any stay intimation from the Appellate courts. 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 commissioners were appointed to carve out the share of the parties as per modified decree. Taluka Surveyor/court commissioner was appointed to carve out share of parties in respect of schedule 'A' item No. 1 to 3 landed properties and submitted report with hand sketch maps allotting share to the parties as per mod-

ified decree. 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 petitioners and respondent No.1 and 3.

13. I have gone through the commissioner/ADLR report wherein schedule 'A' item No.1 Sy.No.179/1 measuring 1 acre 30 guntas, Block No.I to V measuring 14 guntas each and in Sy.No.179/2 measuring 1 acre 33 guntas out of it 14 guntas 9.60 annas in Block No.I to V were allotted to the petitioner No.1 to 3 respondent No.1 and 3 respectively. In item No.2 Sy.No.169/1+2 measuring 5 acre 8 guntas out of it Block No.I to V measuring 1 acre 3 guntas 20 annas each was allotted to petitioners and respondent No.1 and 3 respectively. Item No.3 Sy.No.161/1 a+1b renumbered as 161/4 measuring 2 acre 10 guntas out of it 18 guntas each was allotted to petitioners and respondent No.1 and 3 respectively. The portion of properties shown by the court commissioner in the hand sketch map along with map is

fishable and cultivable. Therefore, said portion of properties is to be allotted to the share of respective parties. So far as in respect of objections raised by respondent No.1 that the said portion of lands allotted to the parties by the court commissioner is not cultivable and fishable and mathematical calculation of division of properties is not proper cannot be accepted. Since there is no evidence adduced by respondent No.1 about fertility of land, irrigation facility, soil condition. Under these circumstances it is not just and proper to allot lands to the parties to one side. If one side land was allotted again question of fertility, nature of land, irrigation facility everything should be taken into consideration. Moreover, properties are to be divided by metes and bounds. In order to avoid further inconvenience to the parties in my opinion lands are to be allotted by metes and bounds. Therefore, I find no merits in the objections raised by the respondent No.1.

14. Advocate/court commissioner was appointed in respect of schedule 'B' properties. Item No.3 and 6 of

schedule 'B' are not traced out, therefore, no share has been allotted to the parties in the said properties. As per objection raised by respondent No.1 that if the house properties are divided by inches it is not feasible for use and enjoyment. The commissioner report in respect of house properties schedule 'B' is not just and proper. However, considering long pending proceedings wherein petitioners are waiting for fruits of decree for the last 10 years. Parties are not ready to get allot house properties by amicable settlement. Division of house properties is not proper.

15. Admittedly, the petitioners and respondent No.3 are the married daughters residing in their respective husbands house. Respondent No.1 is residing at Malakanakoppa village along with family. He was in need of house and open space for his livelihood. Therefore, considering these all grounds schedule 'B' Item No.1 is to be allotted to the petitioner No.1. Item No.2 is to be allotted to the petitioner No.2. Item No.4 is to be allotted to the share of petitioner No.3. Item No.5 is to be allotted to the share of re-

spondent No.3/plaintiff No.3. Item No.7 and 8 are to be allotted to the respondent No.1, which will meet the ends of justice.

16. The properties shown in the name of parties by the court commissioner in respect of schedule 'A' item No.1 to 3 are divisible and equitable as per modified decree by metes and bounds. So far as house properties is concerned invoking power of this court and in order to do the equity and to avoid delay in disposal of case it is just and proper to allot the house properties as discussed above. Hence, I answer the Point No.1 partly in the affirmative.

17. **POINT No.2:** The Court commissioner report with sketch map in respect of schedule 'A' is accepted. Accordingly court proceed to pass the following:

ORDER

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

The petition schedule 'A' item No.1 to 3 situated at Malakanakoppa village Tabakadhonnihalli hobali, taluk Kalaghatagi is

divided between parties by metes and bounds as under:

Schedule 'A' item No.1 Sy.No.179/1 measuring 1 acre 30 guntas, Block No.I to V measuring 14 guntas each and in Sy.No.179/2 measuring 1 acre 33 guntas out of it 14 guntas 9.60 annas in Block No.I to V were allotted to the petitioner No.1 to 3 respondent No.1 and 3 respectively.

Item No.2 Sy.No.169/1+2 measuring 5 acre 8 guntas out of it Block No.I to V measuring 1 acre 3 guntas 20 annas each was allotted to petitioners and respondent No.1 and 3 respectively.

Item No.3 Sy.No.161/1 a+1b renumbered as 161/4 measuring 2 acre 10 guntas out of it 18 guntas each was allotted to petitioners and respondent No.1 and 3 respectively.

The petition schedule 'B' item No.1,2,4,5,7 and 8 are allotted to the share of respective parties as under:

Item No.1 house property VPC No.92/1A was allotted to the share of petitioner No.1.

Item No.2 house/open space VPC No.92/1B was allotted to the share of petitioner No.2.\

Item No.4 open space VPC No.69/1B/1 was allotted to the share of petitioner No.3.

Item No.5 house property VPC No.93/2A was allotted to the share of respondent No.3/plaintiff No.3.

Item No.7 open space VPC No.68/2B and item No.8 house property VPC No.93/2B was allotted to the share of respondent No.1/defendant No.1.

The hand sketch map produced by the court commissioner along with report dated 16.12.2025 in respect of schedule 'A' item No.1 to 3 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 **11th day of August 2026**)

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