

IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS
JUDGE, GADAG

Dated this 20th of June, 2026

PRESENT:

Ms. GEETA SHINDHE,
B.A. LL.B(Hons), LL.M.
Addl. District and Sessions Judge, Gadag

R.A. No.67/2025

- Applicants:** 1. Channabasanna S/o Veeranna
Purad @ Kalyana – Shettar,
Age : 35 years, Occ : Agriculture,
R/o Bannikoppa, Tq: Shirahatti,
Dist: Gadag.
2. Siddalingesh S/o Veeranna
Purad @ Kalyana – Shettar,
Age : 36 years, Occ : Agriculture,
R/o Bannikoppa, Tq: Shirahatti,
Dist: Gadag.
3. Shivakumar S/o Veeranna
Purad @ Kalyana – Shettar,
Age : 34 years, Occ : Agriculture,
R/o Bannikoppa, Tq: Shirahatti,
Dist: Gadag.
4. Sharada W/o Veeranna
Purad @ Kalyana – Shettar,
Age : 55 years, Occ : Agriculture,



R/o Bannikoppa, Tq: Shirahatti,
Dist: Gadag.

(By Sri. A.A. Hosur Advocate)

Vs.

Respondents: 1. Sunil S/o Veerasangappa Maganur,

Age : 54 years, Occ : Business,
R/o Haveri, Basaveshwar Nagar,
10th Cross, 'A' Block, Benaka building
1st floor, Haveri

2. Ravi S/o Veerasangappa Maganur

Age : 52 years, Occ : Business,
R/o Haveri, Basaveshwar Nagar,
10th Cross, 'A' Block, Benaka building
1st floor, Haveri

3. Basavaraj S/o Kalyanappa Purad,

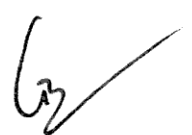
Age : 48 years, Occ : Business,
R/o Near Dyamavvana Gudi,
Nehru Nagar, Byadagi, Tq: Byadagi,
Dist: Haveri

4. Kavita W/o Sunil Maganur,

Age : 48 years, Occ : Home maker,
R/o 8th Cross, 'B' Block,
Basaveshwar Nagar, Haveri
Tq: Dist: Haveri.

(R1 & R2 by Sri. S.S.Shetter, Advocate)

(R3 & R4 by Sri. V.H. Merwade, Advocate)



ORDERS

The appellants have filed this application U/o. XLI Rule 5 R/w.Sec. 151 of CPC praying to stay the execution and operation of the order passed by the Senior Civil Judge, Laxmeshwar in FDP No.5/2023 dated 14.10.2025 till disposal of this regular appeal.

2. The appellants have filed this application on the ground that the Court commission failed to assess the market value and failed to secure the market value from the competent Sub-registrar, Shirahatti, so as to cause justice, equity and prevail the good consciousness. The trial Court has failed to provide proper opportunity to the appellants before the trial Court when they filed application before the trial Court that there are other properties to the credit of the petitioners and the respondents which are the ancestral joint family properties by filing I.A. No.IV. The trial Court had hurriedly passed the judgment and in not considering the fact that without assessment of the fertility of the lands and without assessing the prevailing market value of the land arrived at wrong conclusion. The report of the Court commissioner would amounts to fragmentation and the lands would become useless for cultivation and useless to alienate the properties of the parties. Hence, prayed to allow the application.

3. Initially this application was partly allowed and notice on the application was issued on the Respondents. The Respondents appeared and filed objections.



4. The respondents No.1 and 2 have filed objections to the application contending that the application filed by the applicant U/o. XLI Rule 5 R/s. Sec.151 of CPC is not sustainable and denied the contents of the affidavit. Further it is contended that the present appellants have filed suit for partition in O. S. No. 41/2004 on the file of Addl. Senior Civil Judge at Gadag wherein they have made two different prayers in respect of different items of the properties. One is for partition in respect of suit schedule (A) to (D) properties and remaining properties the present appellants/original Plaintiffs have claimed absolute title and exclusive possession over the suit 1(E) and (F) properties. The Trial Court has awarded share in respect of suit schedule (A) to (D) properties and refused to award share in favour of the present respondent No.1 and 2 in respect of suit schedule (E) and (F) properties holding that those properties are the absolute properties of present appellants are the absolute owners.

5. Being aggrieved by the same, the respondents No.1 and 2 have preferred appeal in r.a. No.46/2014 before Honn'ble Prl. District & Sessions Judge, Gadag, same was decided on 31.08.2016 holding that respondents No.1 and 2 are entitled to share in all the suit properties and same was not challenged by any parties. Thereafter they have filed FDP No.5/2023 before Sr. Civil Judge at Laxmeshwar and the appellants have not objected for the same. As per the preliminary decree proceedings trial Court appointed the Court commissioner / Assistant director of land records Shirahatti and PDO of Bannikoppa to effect the division and the respondents have submitted no objections for Court



commissioners report. The appellants have no legitimate right to award share as determined by the court commissioner in his report.

6. Further it is contended that the respondent No. 1 and 2 are entitled 1/3rd share in respect of house and open sites. Nothing was prevented the appellants/original Plaintiffs to include the properties sought to be added in the final decree proceedings as well as the properties set out in the grounds of appeal before this appellate court while filing the suit in O. S. No. 41/2004 on the file of Addl. Senior Civil Judge at Gadag. That claiming of share in R.S. No.98/2 and 144/1A of Bannikoppa to protracting the litigation by colluding with other respondents. The appellants have failed to explain why those properties are not included in their plaint. Further they have contended that if the appellants are entitled to share in respect of any other non suit properties, the Court may grant liberty to agitate the same in any separate or independent suit. Further the appellants have not assigned proper and sufficient reasons regarding for separate proceedings. Hence, prayed to dismiss the application.

7. The respondents No.3 and 4 have filed objection to the application dated 17.11.2025 contending that the application filed by the applicant U/o. XLI Rule 5 R/s. Sec.151 of CPC is not sustainable and denied the contents of the affidavit.

8. Further it is contended that the present appellants filed a suit for partition in O.S.No. 41/2004 before Addl Senior Civil Judge, Gadag for partition in respect of suit schedule (A)



to (D) properties and remaining properties the present appellants/original plaintiffs have claimed absolute title and exclusive position over the suit 1 (E) and (F) properties the trial Court has awarded share in respect of Schedule (A) to (D) properties the said judgment and decree passed by trial court dated 25.7.2015 is challenged in appeal by the present respondent No. 1 and 2 before Hon'ble Prl. District and Session Judge, Gadag in R.A.No. 46/2014 which was decided on 31.08.2016 and holding that the respondents No.4 and 5 are jointly entitled for 1/3rd share in suit 1(A) to (F) properties. Tthe present the respondent No.3 and 4 are the LRS of Kalyanappa S/o Maharudrappa Purad who is respondent No.5 in R.A 46/14 and said judgment and decree is not challenged by any parties. The respondent No.1 and 2 have filed F.D.P.No. 5/2023 before Senior Civil Judge Court, Laxmeshwar and the appellants have not filed any objections for the same and the trial court appointed commissioner to make division of the suit properties as per preliminary decree. The Court commissioner has effected the same.

9. Further it is stated that the trial Court has rightly awarded the share in respect of agricultural lands and house and open site as proposed by the Court commissioner. Now the present appellants claiming share in R.S. No.98/2 and 144/1A of Bannikoppa of Shirahatti, where actually the properties of deceased Kalynappa who is respondent No.5 in R.A No.46/2014. For the first time in final decree proceedings at the instance of original plaintiffs / present appellants only for protracting the litigation and delay the proceedings. The appellants have failed to explain as to why those properties



are not included in their plaint. The appellants colluding in other respondents are intending to protract the litigation and to delay the proceedings, they cannot claim R.S.No. 98/2 and 144/1A at this belated stage. Hence, prayed to dismiss the application.

10. Heard the arguments of the learned counsel for the appellants.

11. The points that arise for the Court's consideration are as follows:

- (1) Whether the appellant has made out prima facie case.
- (2) Whether the balance of inconvenience lies in favour of appellant.
- (3) Whether the appellant suffers irreparable loss or hardship if the application is not allowed.
- (4) What order?

12. The findings of this Court on the above points are as follows:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per final order, for the following:

REASONS

13. **Point No.1 to 3**: The appellants are the respondents before the Trial Court in FDP No.5/2023. FDP No.5/2023 is arising out of O.S. No.41/2004 which was decreed on 25.07.2014. In R.A. No.46/2014 decree of the trial Court was



modified and held that the plaintiffs therein are jointly entitled for 1/3rd share in suit item No.A to F properties and the defendant No.1 is entitled for 1/3rd share in suit item No.A to F properties and the defendants No.4 and 5 are jointly entitled for 1/3rd share in suit item No.A to F properties. The petitioner therein has filed Final Decree Proceedings to carve out her 1/3rd share in the suit item No.A to F properties.

14. The appellants herein are the respondents No.1 to 4 in FDP No.5/2023. After issuance of the notices in FDP, the Court has appointed court commissioner and sought commissioner report to allot the shares in favour of the petitioner. The commissioner i.e., PDO Bannikoppa has submitted his report on 18.03.2024 and ADLR Shirhatti has filed his report on 20.04.2024. The appellants herein have submitted objections to the commissioner report stating that notices to them were not issued. In the objection they have stated that commissioner has failed to obtain valuation certificate and not properly valued the suit properties. They have further objected that the divisions of the properties will lead to fragmentation as they are small in size. The reports does not match with the revenue records and they are mechanical in nature. The Court in FDP No.5/2023 found that the commissioner has appointed due procedure of law i.e., issuance of notices to the parties conducted mahazer and preparation of sketch and thereafter has submitted the same to the Court. Further observed that the respondents No.5 and 6 have not objected to the commissioner's report. It is held that the objections raised by the respondent No.2 does not hold water as it is evident from the records that the



commissioner has discharged his duty by issuing notices and drawing the report in the right of the decree and available records. The commissioner report is in accordance with the mandate and judgment passed in R.A. No.46/2014. Further the Court ordered for allotment of share made in favour of petitioner as well as respondents as mentioned in the commissioner report with annexed sketch is made absolute and the commissioner report was made part and parcel of the final decree.

15. The counsel for the appellants herein argued that the commissioner allotment of share as resulting in fragmentation of the lands which referred to loss, useless for cultivation and also useless for alienation of the properties, thereby causing hindrance to the agricultural activities over the suit properties. Hence, as in the event of changing the name in the records it would caused inconvenience to all the parties.

16. This appeal is preferred by the appellant seeking to set aside the Judgment passed by the Learned Sr. Civil Judge Cort, Laxmeshwara in FDP No. 05/2023 dated 14-10-2025, and the appeal be allowed by remanding the matter to the trial court, to try afresh by giving opportunity to both the parties to include the properties which were urged vide I.A. No. 4, to lead evidence and dispose off the case on merits by accepting the evidences.

17. It is pertinent to not that this appeal is filed on the final decree and it is not on the preliminary decree. The relief sought by the appellant has an impact of affecting the rights



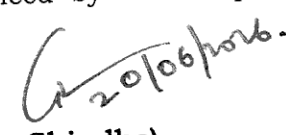
in the preliminary decree. The preliminary decree was challenged in R.A.No. 46/2014 which was decided on 31.08.2016, the said decree is not challenged. The appellant has not submitted anything to show that why the I.A. No. 4 filed in the FDP proceedings were not urged in the earlier proceedings. There is not prima facie case made out by the appellant. The preliminary decree has attained finality, the balance of inconvenience lies in favour of the respondents. Further the contention of fragmentation of lands, the appellant has not show anything on records that the commissioners divisions are violative of laws concerning division of agricultural properties which prevents fragmentation. The appellant has failed to show that what hardship will be cause to him if the final decree is enforced. Hence I answer point No. 1,2 and 3 in the Negative.

18. **Point No.4:** In view of the above discussions, this Court proceeds to pass the following:

ORDER

The application filed by the appellants U/o.41
Rule 5 R/w. Sec. 151 of CPC is hereby dismissed.

(Dictated to the Stenographer Grade-III, transcription thereof computerized by her, corrected, and then pronounced by me in open Court on this 20th June, 2026)


(Geeta Shindhe)
Addl. District & Sessions Judge,
Gadag.