

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
ARAKALAGUD**

FDP NO. 04/2014

PETITIONER : RATHI

Vs

RESPONDENT : KRISHNAPPA & OTHERS

ORDER

On 15/06/2023 the learned counsel for respondent NO.1 submitted that in the commissioner report submitted by the Court commissioner with respect to item No.4, shares have not been allotted to the plaintiff, defendant No.2 to 4, as per the order of appellate Court. Hence, the case stood posted for appropriate orders on said aspect.

On perusal of commissioner report dated: 09/06/2023, submitted by PW.2 Engineer, Arakalagud it is found that the submission made by learned counsel for respondent No.1 is true.

Hence, this deems it necessary to re-issue commissioner warrant to the said court commissioner with clear instruction as per the order of appellate Court in R.A. No. 1/23.

In para 21 of said judgment in R.A.1/23, the appellate Court has clearly observed that :

- 1) Plaintiff (i.e. Respondent No.1 in F.D.P. No. 4/14) is entitled to the 6/25th share in item No.1 to 4.
- 2) Defendant No.2 and 3 (i.e., Respondent No.3 and 4 in F.D.P. No. 4/14) are entitled to 6/25th share each in item No.1 to 4.
- 3) Defendant No.1 (i.e., respondent No.2 in F.D.P. 04/2014) is entitled to 1/25th share in item NO.1 to 4 .

4) Defendant No.4 (i.e., Respondent No.5 in F.D.P. No. 4/2014) **is not** entitled to any share in item No.1 to 4.

5) Defendant No.5 (i.e., petitioner in F.D.P. 4/2014) is entitled to $6/25^{\text{th}}$ share in item NO.1 to 4

This being the position as on the date of passing of decree in R.A.No.1/2013., subsequently on 18.06.2018, the death of defendant No.1 i.e., respondent NO.2 in F.D.P. 4/2014, was reported and further the counsel for petitioner also filed memo stating that her LR's are already on record. As such, the share allotted to respondent No.2, has to be divided amongst her legal heirs, i.e., plaintiff (Respondent No.1 in F.D.P), defendant NO.2 (Respondent No.3 in F.D.P) and defendant No.3 (Respondent No.4 in F.D.P.) as they are her children. As such plaintiff, defendant No.2 and defendant No.3 receive $1/3^{\text{rd}}$ of $1/25^{\text{th}}$ share each in addition to their share already allotted in R.A.No 1/13 as mentioned above .

Accordingly, the shares of parties, after considering all the aforesaid aspects, are as under;

Plaintiff (respondent No.1 in F.D.P. 4/2014) is entitled to $6/25 + (1/3^{\text{rd}} \text{ of } 1/25) = 6/25 + 1/75$ share in item No.1 to 4.

1. Defendant No. 2 and 3 (i.e., Respondent No.3 and 4 in F.D.P.) are entitled to $6/25 + (1/3^{\text{rd}}$ of

- 1/25) each i.e., $6/25 + 1/75$ th share each in item No.1 to 4.
2. Defendant No.1 (i.e., Respondent No.2 in F.D.P. 4/2014) is entitled to 1/25th share in item No.1 to 4.
3. Defendant No.4 (Respondent No. 5 in F.D.P. 4/14) **is not** entitled to any share .
4. Defendant No.5 (Petitioners in F.D.P. 4/2014) is entitled to $6/25^{\text{th}}$ share in item NO.1 to 4.

Hence it is necessary to issue fresh commissioner warrant to Taluk Surveyor, to measure item No.1 to 3 and to Engineer, PW.D. Arakalgud to measure item No.4 property and to demarcate the property as per the order of this Court which is in terms of order of appellate court in R.A.No.1/13. It is made clear that earlier reports submitted by Court Commissioners are not taken into consideration since they are not in terms of order of appellate Court in R.A.No. 1/ 2013.

Commissioner fee is fixed at Rs.1,000/- each to both the Court Commissioners.

office is directed to send the copy of order in R.A. No. 1/2013 and this order passed on this day for further clarification to the Court Commissioners while demarcating the property.

Issue commissioner warrant to both court commissioners, if P.F. is paid and after depositing Court Commissioner fee.

Commissioner warrant returnable
by 05/02/2024.

(Smt. Preeti L. Malavalli)
C.J. & JMFC.,Arakalgud.