

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.
AT ARSIKERE

: PRESENT :

Smt. E. Chandrakala, B.Sc, LLB.,
Senior Civil Judge & JMFC,
Arsikere.

DATED ON THIS THE 5th DAY OF JULY 2016

F.D.P. No.7/2007

Petitioner : Kashi V. Manjunatha
S/o Late Kashi Vishwanatha Shetty,
Aged about 54 years,
R/o No.4033, Yamarald Rice
Sunjopa, California 96135 America.
P.A. Holder Veerananarayan
S/o R.V. Gopalakrishna,
R/o Davanagere.

(By Sri N.S.S., Advocate)

-V/s-

Respondents : 1) Smt.K.V. Nagarathnamma,
W/o Kashi Vishwanatha Shetty,
Aged about 80 years,
R/o Shashinivasa, B.H. road,
Arsikere.

2) K.V. Shashikumar
S/o Kashi Vishwanatha Shetty,
R/o B.H. road, Arsikere.

3) Dr K.V. Ramesh
S/o Late Kashi Vishwanatha
Shetty, Aged about 46 years,
R/o Door No.16,
Kashi Nivasa, Gavipuram
Extension, 2nd Cross,
Bangalore.

- 4) H.K. Shanta Keshava,
W/o H.V. Keshavamurthy,
Aged about 60 years,
Balaji Electronics,
Doddapet,
Tiptur.
- 5) Smt.B.S. Rajeshwari
W/o Shivakumar,
Aged about 56 years,
Door No.77/2,
3rd Main road,
Hanumantha Nagar,
Bangalore.
- 6) Smt.Jayalakshmi
W/o Govindaraj,
Aged about 53 years,
R/o Subhash Nagar,
Arsikere.
- 7) Naga Vishnesh S/o Shivakumar,
Minor.
R/o Shashinivasa,
B.H. road, Arsikere.
- 8) The Tahasildar, B.H. road,
Arsikere.
- 9) Taluk Surveyor,
Arsikere.
- 10) The Deputy Commissioner,
DC Office, Hassan.
- 11) The Chief Officer,
Municipality,
Arsikere.
- 12) K. Hemaprakash,
W/o Late K.V. Prakash.
- 13) K. Shreyas Prakash S/o K.V.
Prakash.

- 14) Shruti Prakash W/o S.A. Pavan,
Aged about 26 years.

Respondents 12 to 14 are the R/o Egg
Center, No.147/3, Makai Complex,
A.R. Compound, Mysore road,
Bangalore.

(R-1 & 2 by Sri GAK, Advocate)
(R-3 by Sri P.N., Advocate)
(R-4 to 6 by Sri M.M.N., Advocate)
(R-7 by Sri S.V.S., Advocate)
(R-8 to 10 by AGP, Arsikere)
(R-11 by Sri P.G.K., Advocate)
(R-12 to 14 by Sri H.S.K., Advocate)

ORDERS

The petitioner has filed this petition U/s 54 of CPC praying this Court for declaration that he is the owner of the suit schedule properties by virtue of the gift deeds dated 21.12.1999 and 21.12.1999 respectively and for such other reliefs.

2. The brief facts made in the petition are that:

One K.V. Prakash, K.V. Ramesh and K.V. Shashikumar have filed suit against the petitioner and respondents in O.S.25/1994 for partition and separate possession of their legitimate shares in respect of 'ABC' schedule properties. The suit was decreed by declaring 1/9th share in suit 'A and B' schedule properties. It is further held that at the time of allotment of shares, by way of equity the property allotted to the 2nd defendant has to be allotted to the share of 3rd defendant K.V. Manjunatha the petitioner in this case.

3. It is further stated that during the pendency of the suit, the parties to the suit have entered into compromise in terms that the present petitioner has to clear the family debts incurred to the tune of Rs.45 lakhs. The family members agreed to gift the suit properties in favour of present petitioner and by consent of the all family members the 1st respondent has gifted the properties. The same was brought to the notice of the court in O.S.25/1994 but the court has passed the preliminary decree. Hence, the suit schedule properties became the absolute property of petitioner by virtue of gift deed dated 21.12.1999 and 22.12.1999. Hence, he prays for declaration and also for enquiry regarding allotment of petition schedule properties.

4. Per contra, the respondents appeared before the Court through their respective counsels and filed separate objection statements.

5. The respondents 1 and 2 in the objection statements have categorically denied the petition averments inter-alia admitted the preliminary decree passed in O.S.25/1994. It is contended that the petitioner has made false averments that all the family members agreed to gift the suit properties in favour of petitioners if he discharge the family debt to the tune of Rs.45 lakhs. The Court has not considered the gift deed dated 21.12.1999 and passed the decree in O.S.25/1994. As per decree one K.V. Ramesh has filed FDP.11/2001 and the same was got dismissed as

not pressed. It does not mean that he relinquished all his rights in respect of schedule properties. It is further contended that the 6th respondent has filed suit O.S.40/2005 and the said suit was dismissed by filing memo on 3.9.2005. It is contended that during the pendency of the suit the 1st respondent gifted some of the properties in favour of 2nd respondent and his son dated 17.12.2006. Since then the 2nd respondent and his son became the owners of the properties more fully stated in the objection statements. It is contended that the court has already passed preliminary decree in O.S.25/1994. Hence, they have got 1/9th shares in respect of all the properties and prays for dismissal of petition and allotment of their shares as per preliminary decree.

6. The 3rd respondent in the objection statement has denied the petition contents and admitted that the Court has decreed O.S.25/1994 declaring the shares of all family members. So, by virtue of the preliminary decree he has 1/9th share in the suit properties. Thus, he prays for dismissal of petition.

7. The 7th respondent in the objection statement has contended that the petitioner is not the absolute owner of the suit schedule properties by virtue of the decree and also the gift deed. It is contended that the 1st respondent out of love and affection has gifted some of the properties in his favour. So, he became the absolute owner of the suit properties. It is contended that the petitioner has not

cleared any debts to the tune of Rs.45 lakhs. Thus, he is not entitled for any relief as sought for. Thus, he prays for dismissal of petition.

8. The respondents 8 to 10 in their objections have contended that the application is not maintainable either in law or on facts. The respondents 8 to 10 have got 1/9th share in suit properties as per preliminary decree passed in O.S.25/1994. The gift deed dated 21.12.1999 is not binding on the rights of respondents 8 to 10 and the preliminary decree was drawn to allotting the share of 1st defendant in favour of present petitioner. The petitioner has contended that in order to clear the family debts to the tune of Rs.45 lakhs, the 1st respondent has gifted all the suit schedule properties in favour of petitioner. The 1st respondent has no exclusive right to gift the suit properties in favour of petitioner. Because there was preliminary decree passed in O.S.25/1994 declaring the shares of all the family members to the extent of 1/9th shares. It is further contended that the gift deed executed by 1st respondent in favour of petitioner is not binding on the rights of respondents. Thus, they pray for dismissal of petition and allotment of their 1/9th shares in the suit schedule properties.

9. The GPA holders of the petitioner examined as PWs.1 and 2 and got marked documents as per Ex.P.1 to P.22. On the other hand, the respondents 2, 3, 5, 6, 7

examined as RWs.1 to 5 and got marked documents as per Ex.R.1 to R.28.

10. I have heard arguments on both sides.

11. I have perused the petition, objections, documents and written arguments in the case.

12. In the light of above material on record, the points that arise for my consideration are:

1. Whether the petitioner is entitled for Final decree by virtue family arrangement and as per gift deeds dated 21.12.1999 and 22.12.1999?

2. Whether the petitioner is entitled for the reliefs sought for?

3. What order?

13. My findings on the above points are as follows:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: As per final order for the following:

REASONS

14. **Point Nos.1 and 2:** The petitioner to substantiate that he acquired the right over the suit schedule properties by virtue of gift deeds dated 21.12.1999 and 22.12.1999 has examined his GPA holders as PWs.1 and 2. PW.1 during the pendency of the suit reported to be

dead. So, the evidence of PW.1 is no way helpful to the petitioner. Another GPA holder examined as PW.2. PW.2 in his evidence has stated that the respondents have filed suit against the petitioner and others before this Court for partition and separate possession in respect of 'ABC' schedule properties in O.S.25/1994. He further stated that during the pendency of the petition, the family members of petitioner including respondents 1 to 6 have entered into compromise in terms of discharge of family debts by the petitioner. In turn the katha holder of the suit properties i.e., 1st respondent has gifted the properties in favour of petitioner under two gift deeds dated 21.12.1999 and 22.12.1999. He stated that the petitioner is in possession and enjoyment of the suit schedule properties by virtue of the gift deeds. He further stated that the gift deed was produced by the parties in O.S.25/1994, but the Court has not considered the same for the reason that it amounts to lis pendency and decreed the suit by declaring the shares of parties in respect of 'A' and 'B' schedule properties. The 3rd respondent has filed FDP before this Court for draw final decree and the same was got dismissed by him in view of the compromise. The petitioner has acquired the ownership over the schedule properties by virtue of gift deeds.

15. The petitioner has produced the documents to substantiate his contention, which are marked as Ex.P.1 to P.22. Ex.P.1 is the GPA executed by the petitioner in favour of PW.2. Ex.P.4 and 5 are the important documents. The said documents are certified copies of the gift deeds dated

21.12.1999 and 22.12.1999 executed by 1st respondent Nagarathnamma in favour of petitioner Manjunatha. Except Ex.P.4 and 5, the other documents produced by the petitioner are in respect of the proceedings took place before the Tahasildar, Arsikere, Commissioner, Arsikere, CMC, Arsikere and Deputy Commissioner, Hassan with regard to change of katha. The Deputy Commissioner, Hassan has cancelled the mutation as per the judgement and decree passed in O.S.25/1994. So, the other documents except Ex.P.4 and 5 are no way helpful to prove the ownership of petitioner in respect of the properties. PW.2 in his cross-examination has pleaded ignorance in regard to proceedings took place in O.S.25/1994.

16. It is the case of petitioner that during the pendency of O.S.25/1994 all the family members have arrived to a family arrangement about discharge of family debts of Rs.45 lakhs by the petitioner, in turn all the family members consented to gift the suit properties in favour of petitioner. Thereby, the 1st respondent being the kathedar of the suit properties has gifted the properties in favour of petitioner. So, the burden lies on the petitioner to prove that there is family debts to the tune of Rs.45 lakhs and 1st respondent has absolute right to gift the suit properties.

17. It is to be noted that some of the respondents have not denied the contention of petitioner. But the respondents 2, 3, 7, 12 to 14 have denied the case petitioner and claimed their shares as per decree in O.S.25/94. The

respondents 5 and 6 have tendered their affidavits and examined as RWs.1 and 2. They deposed in support of the case of petitioner. They stated that the petitioner has cleared family debts, in turn their mother has gifted the suit properties. The 3rd respondent examined as RW.5 and has accepted the case of petitioner in part and denied the contention of petitioner that he became the sole owner of the property.

18. The contesting respondents in the case are respondents 2, 3, 7 and 12 to 14. Respondent No.7 is the minor. Hence, he is represented by natural guardian i.e., mother. The respondents 12 to 14 have not chosen to lead evidence on their behalf. The 2nd respondent is the brother of petitioner, is examined as RW.3. RWs.3 and 4 in their chief evidence have categorically stated the suit O.S.25/1994 was decreed by declaring the shares of all family members in suit properties and the 1st respondent has no exclusive absolute right to gift the suit properties in favour of petitioner. They further stated that the petitioner has not discharged any debts much less Rs.45 lakhs and the petitioner has not produced any documents in that aspect. They set up a new case that the 1st respondent out of love and affection has gifted some of the properties in favour of 2nd and 7th respondent under two registered gift deeds. By virtue of the deeds both respondents 2 and 7 became the owners and in possession of the properties as mentioned under gift deeds.

19. RWs.3 and 4 have produced the documents, which are marked as Ex.R.1 to R.27. RW.5 produced the gift deed as per Ex.R.28. Ex.R.1 is the copy of the petition given by some of the respondents to the Town Municipality, Arsikere to mutate the katha in the joint names of family members as per decree. Ex.R.3 is the certified copy of the gift deed dated 17.2.2005 executed by 1st respondent in favour of 7th respondent. NagaVishnesh in respect of the property situated at Arsikere town. Ex.R.4 is the certified copy of the gift deed dated 17.12.2005 executed by the 1st respondent in favour of 2nd respondent K.V. Shivakumar. Ex.R.28 is the original gift deed dated 21.12.1999 executed by 1st respondent in favour of K.V. Ramesh, the 3rd respondent in the petition. Apart from the aforesaid documents, all other documents are pertaining to the proceedings took place between the parties in respect of change of katha as per their respective gift deeds. Ex.R.11 is the important document in the case i.e., certified copy of the partition deed dated 2.2.1990. The recitals of the document reveals that on 2.2.1990 Kashi Vishwanatha Shetty and his brothers have got divided all the family properties. The schedule of the partition deed goes to show that Kashi Vishwanatha Shetty has got 'AB' schedule properties mentioned in O.S.25/1994. RWs.1 and 2 in their cross-examination have unequivocally admitted that the suit properties acquired by one Kashi Vishwanatha Shetty, father of petitioner and respondents 1 to 6 by virtue of partition deed dated 2.2.1990. They further admitted that the suit

O.S.25/1994 was decreed and declared 1/9th share to all the family members.

20. PW.2 in his cross-examination has unable to state the details about the debt incurred by the petitioner family and names of the persons to whom the petitioner has paid Rs.45 lakhs. Apart from oral self assertion of PW.2 there is no other oral or documentary evidence before the Court to evidence that there is family debts of Rs.45 lakhs and as per family arrangement the petitioner has discharged the said debt.

21. **RW.3 was not cross-examined by the petitioner counsel.** He deposed that he acquired some of the properties by virtue of the gift deed executed by 1st respondent on 17.12.2005 and suit was also filed against the petitioner and others in O.S.346/2009 and O.S.100/2011. The same are pending for decision. RW.4 in her cross-examination has also denied the contention of petitioner that he discharged the Bank debts of Rs.45 lakhs and all members agreed to gift the properties in favour of petitioner. She stated that the 1st respondent out of love and affection has gifted some of the properties in favour of her son i.e., 7th respondent and thereby he became the owner of the property.

22. As could be seen from the evidence of RW.1 to 5 and documents produced by them it is clear that originally the suit properties belonged to one Kashi Vishwanatha

Shetty and he got the properties by virtue of registered partition deed dated 2.2.1990. It is further undisputed that after death of Kashi Vishwanatha Shetty, the katha was mutated in the name of 1st respondent wife. It is also undisputed that after death of Kashi Vishwanatha Shetty, his 3 sons have filed suit in O.S.25/1994 for partition and the suit was decreed and declared that all family members have got 1/9th sharer in the suit properties.

23. It is argued by the petitioner counsel that the petitioner has acquired the ownership over the suit properties by virtue of gift deeds executed by 1st respondent and till this day none of the members have challenged the gift deeds, as such the petitioner became the absolute owner of the property. On the other hand, it is stated in the written arguments filed by the respondents 2 and 7 that though they have not challenged the gift deeds, but they have not admitted in O.S.25/94 also in this case that the petitioner has discharged family debts of Rs.45 lakhs.

24. On perusal of the rival contention of both the parties, it is undisputed that Kashi Vishwanatha Shetty was the absolute owner of schedule properties, which acquired by him by virtue of registered partition deed dated 2.2.1990. It is further undisputed that after death of Kashi Vishwanatha Shetty, the katha was mutated in the name of his wife, i.e., 1st respondent in the case. It is also undisputed that some of the respondents have filed the suit against the petitioner and others before this Court in

O.S.25/1994 for partition and separate possession of their legitimate shares in respect of 'ABC' schedule properties. It is also admitted fact that the parties to the suit have not challenged the judgement and decree passed in O.S.25/1994 so far. So, it reaches finality in the eye of law. In O.S.25/1994 the Court has drawn the preliminary by declaring the shares of parties to the extent of 1/9th share and also ordered that while allotting 1/9th share of the 1st respondent Nagarathnamma may be allotted to the present petitioner by virtue of equity.

25. Sri NSS, Advocate for petitioner and also respondents counsel filed written arguments and argued that FDP proceedings are continuation of original suit. Hence, this Court can declare the rights of parties as per gift deeds. On the other hand, it is argued the judgement and decree was not challenged by any of the parties. As such, this Court cannot go beyond the preliminary decree passed in the suit. The point for consideration is whether this Court in FDP proceedings can go beyond the preliminary decree or not.

26. Further, it is also argued by the petitioner counsel that the family arrangements between the family members during the pendency of the suit does not require any registration and as per family arrangements the Court can pass final decree. The petitioner has also relied upon several decisions on this aspect. Of course, I do concede that the RWs.1 and 2 have supported the case of petitioner.

But the other respondents have denied the contention of petitioner. The object of family arrangements is to protect the family from long drawn litigation. The family arrangements by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the in the hands of a few is a mile stone in the administration of social justice. So, the family arrangement or settlement is not necessarily require compulsorily registration.

27. According to the contention of petitioner there was family arrangement during pendency of suit. The family arrangement is permissible under law. Family arrangement was defined in **Halsbury's Laws of England as follows.**

“It is an agreement between members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.”

28. The concept of a family arrangement has been accepted by Indian Courts. The agreement may be either implied or express, it is accepted under law. No doubt, a family arrangement which is for the benefit of the family generally enforced in a court of law. But, before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted

upon. Family arrangement which is unfair and is founded upon false hood and misrepresentation cannot bind the parties. It is also well settled law, that if a compromise has been entered into good faith by the manager of a joint family cannot be allowed to disturb it on the ground of inequality of the family, unless there was fraud of some ground which in law vitiates.

29. By keeping the above principles law, if we looked in to the material on record, it would goes to show that the 1st respondent is not the manager of the family to enter in to the family arrangement by way of executing gift deeds. She has no right to gift the shares of other sharers in favour of petitioner. Further, the family arrangement was made in lieu of obligation that the petitioner has to discharge all family debts. Even, on this score also the contention of petitioner is not acceptable because P.W.2 has unable to say the details of debts and discharge. Absolutely there are no documents in this regard. The other respondents except sisters of petitioner have not admitted the family arrangement. According to the contention of petitioner during the pendency of the suit O.S.25/1994, the parties i.e., family members have entered into compromise and agreed between them that the petitioner has to clear the family debts to the extent of Rs.45 lakhs. In turn the other family members have agreed and consented to gift the schedule properties more fully mentioned as Ex.P.4 and 5 in favour of petitioner. Both parties have not produced order

sheet passed in O.S.25/1994 or the other documents to show that they have reported the compromise during the pendency of the suit and the Court has rejected the compromise and passed the preliminary decree. As I have stated above, the Court while passing the preliminary decree has also ordered to adjust the share of 1st respondent in favour of petitioner while determining and allotting the shares as per preliminary decree. So, from this it would go to show that the Court while passing the preliminary decree has taken into consideration in regard to gift deed produced by the petitioner in O.S.25/1994. More importantly, if really there was a family arrangement what prevented the parties to appear before the court and filed application U/023 rule 3 CPC and to report the compromise in the suit itself without executing the gift deeds. The petitioner has not explained the circumstances which drive him to get the gift deeds instead of reporting the court. The family arrangement as stated by petitioner was not acted upon, but the same is resisted by the sharers. Thus, the gifts cannot be construed as family arrangement. Further, where property is absolutely at the disposal of 1st respondent, she may give it away as freely. The Gift is the transfer of certain existing right over the property without consideration. According to petitioner the gift made subject to discharge of debt incurred in the family. As I have stated supra, there is absolutely no single scrap of paper to evidence that the petitioner has cleared all the debts of the family. Hence, the transfer of right over the property by way of gift is not valid under law.

30. The core question that arise for consideration is whether more than one preliminary can be drawn while drawing final decree or not. In view of well settled law, there is nothing in the CPC which prohibits of more than one preliminary decree if circumstances justify the same and it may be necessary to do so particularly in partition suits when after preliminary decree some parties die and shares of other parties are there by augmented. **In a partition suit, even after the preliminary decree, if on the basis of subsequent events, there are changes in the situation including changes in the grouping of shares amongst the parties or acquisition of shares of other co-sharers by some of the co-sharers for which the decree for partition can be suitably moulded, the Court can and should do so and in such circumstances the variation in the preliminary decree can always be made. There is nothing in the Civil Procedure Code which prohibits the passing of more than one preliminary decree if in the facts and circumstances of a case and in consideration of equity and justice, such variation of the preliminary decree is warranted.**

“It is also settled law after the passing of the preliminary decree in a partition suit if there has been enlargement or diminution of shares or the rights of the parties have been changed by reason of the rights that have been conferred by the statute or rights of the parties by a second or by subsequent purchase or by assignments of interest by whatever cause, the Court,

before passing its final decree, has to consider and decide the matter and grant a final decree in accordance with such subsequent devolutions to avoid multiplicity of suits and give complete and appropriate relief to all the parties.”

31. At this stage, I would like to refer the decision reported in *ILR 2008, Karnataka page 13*, wherein Their Lordships have held that:

B) “CODE OF CIVIL PROCEDURE, 1908, ORDER 20 RULE 18 – Final decree proceedings – Competency of the final decree Court - Determination of shares of parties under – HELD, Final decree proceedings are continuation of the suit for partition – The preliminary decree declares and determines the shares of parties – Actual division of the properties, putting the parties in separate possession of their shares, adjustment of equities, impartibility of the suit property, sale of property and all other disputes have to be settled in Final decree proceedings – The final decree Court is competent even to determine the interse partition among the defendants in which the plaintiffs have no share – There is no impediment for the Court in the Final decree proceedings to determine the shares of each of the defendants in the entire schedule property.

C) B) CODE OF CIVIL PROCEDURE, 1908, SECTION 54 - ORDER 26 RULE 13 - PARTITION ACT, 1983 - SECTION 2 - Power of Court to order sale instead of division in partition suits - HELD, Whenever the property cannot be divided and separated as specified under section 54 or Order 26 Rule 13 CPC, the provision of Partition Act, 1893 will step in to resolve the controversy between the parties and to the benefit of share holders to enjoy the fruits of decree - ON FACTS, HELD, The material on record discloses that the Commissioner in his report stated that the schedule property is not partitionable - Except three legal representatives of defendant No.5, all other parties to the final decree proceedings have agreed for sale of the schedule property and to divide the sale proceeds - Further there is no offer by the legal representatives of defendant No.5 to buy the shares of plaintiffs and other defendants - Under the circumstances, the Trial Court found that division of schedule property cannot reasonably and conveniently be made, proceeded to pass the impugned order directing the sale of schedule property - Thus, the impugned order passed by the final decree Court is in strict compliance of the mandatory requirement under section 2 of the Partition Act - FURTHER HELD, Final decree proceedings are

not execution proceedings under Order 21 CPC – Therefore, the question of adjudicating the claim of legal representatives of defendant No.5 and following the procedure under Order 21 CPC will not arise”.

On careful reading of the aforesaid decision, the Hon'ble High Court has held that in the preliminary decree the Court declared the rights of the parties in respect of properties and as per order 20 rule 18 of CPC and Sec.54 of CPC the Court will determine the shares of parties in the final decree proceedings. In FDP proceedings actual division of the properties putting the parties in separate possession of their shares, adjustment of equities, sale of properties and all other disputes have to be settled in final decree proceedings. So, in view of the aforesaid propositions of law, this Court in final decree proceedings is competent even to determine the interse partition among the parties.

32. In view of the well-settled principles of law, though it empowers court to determine the shares and to adjust the shares of parties in respect of settlement arrived between them during the pendency of the proceedings but the family arrangement stated by the petitioner is not enforceable under law for two reasons that the petitioner failed to prove his obligation to discharge the family debts as per settlement and secondly, the 1st respondent has no exclusive absolute right to gift the properties in which she has no right. On the other hand, the respondents 2, 3 and 7

have also taken up their contention that the 1st respondent has gifted some portion of the properties in their favour as per Ex.R.4, 5 and 28. When the respondents have contended that 1st respondent has no absolute right to gift the property in favour of petitioner, certainly she has no exclusive right to gift portion of the properties in favour of 2nd, 3rd and 7th respondents. The same logic also applies to the respondents.

33. Admittedly, the 1st respondent became the kathedar of the property on Pavati Varasu basis after the death of Kashi Vishwanatha Shetty. As per decree in O.S.25/1994, the sons and daughters including the 1st respondent have got 1/9th equal shares in all the schedule properties more fully described in the O.S.25/1994. When that such being the case, the right of 1st respondent is not absolute and she can gift the property only to the extent of her share. Though the 1st respondent has gifted the properties in favour of petitioner, respondents 2, 3 and 7, they will not acquire title to the properties as per respective gift deeds since the parties to the suit have all equal shares in the suit properties.

34. It is very important to state in Ex.P.4 and P.5 there are no recitals about family arrangement between the members of the family. Hence, it is not probable to accept the contention of petitioner that all the family members have consented to gift the property in favour of petitioner. Further it is argued by the petitioner counsel that all family

members have consented to gift the property and they have also put their signatures to Ex.P.4 and P.5. Thus, they cannot estopped from contending that they have not agreed to gift the property in favour of petitioner. It is to be noted that on careful perusal of the documents, the sons and daughters of Kashi Vishwanatha Shetty have put their signatures as witnesses to the documents. But the 1st respondent has to put her signature as donor and the petitioner has put his signature as donee accepting the properties. So, from this it made very clear that mere putting signature as witnesses to the document cannot come to the conclusion that they have consented to gift their shares in favour of petitioner. But it can be infer that others have knowledge about gift. Therefore, I do not find any force in the arguments of learned counsel for petitioner in this regard.

35. RW.1 in her chief-examination has stated there was agreement of compromise prior to gift of properties in favour of petitioner. But the parties to the petition have withheld to produce any such agreement of compromise took place between them. Thus, it is not probable to accept the contention of RW.1 in this regard. Though RWs.1 and 2 have accepted the gift deeds executed by 1st respondent in favour of petitioner as far as possible the shares of 1st respondent and sisters of petitioner may be allotted to the petitioner at the time of demarcation and entire property cannot be demarcated in favour of petitioner.

36. As per order 20 rule 18 and Sec.34 of CPC, this Court while dealing with FDP matters has powers to determine the shares of parties as per preliminary decree or any transfer of property took place during the pendency of the petition or transfer of right between the family members or any adjustment made between the parties, the Court can consider the doctrine of equity and determine the shares of parties. Apart from this Court cannot adjudicate the right of petitioner by virtue of the gift deed that he is the absolute owner of the petitioner. The petition filed by the petitioner U/s 54 of CPC for declaration of his title to the suit property is not permissible under law.

37. The petitioner has not claimed any relief against the respondents 8 to 11. Initially the revenue authorities have changed the khata on the basis of gift deeds. Later on by virtue of judgment in O.S.25/94 have restored to its original position. On the other hand the respondents have also not establishes that they violated court order. Hence, the petition is liable to be dismissed against the above respondents also.

38. In view of the above discussion, reasoning and hearing arguments at the bar, I have reached to the conclusion that the petitioner has failed to prove the family arrangement and discharge of his obligation. He further failed to prove that 1st respondent has exclusive and absolute right to gift the entire suit properties in his favour. He failed to prove that the other sharers of the properties

have consented to gift the properties as per family arrangement or they relinquished their rights over the properties. The relief claimed by the petitioner is beyond the scope of Order 20 rule 18 and sec 54 CPC. The petitioner has not claimed his share as per preliminary decree. Hence, the petitioner is not entitled for declaration of his ownership and demarcation of entire property in this FDP proceedings. Thus, I answer point Nos.1 and 2 in the negative.

39. **Point No.3:** In view of my above discussion and findings on point No.1, I proceed to pass the following:

ORDER

The petition filed by the petitioner
U/s 54 of CPC is dismissed with cost.

(Dictated to the Stenographer, transcribed and typed by him,
revised by me and then pronounced by me in the open Court on
this the 5th day of July, 2016)

(E. Chandrakala)
Senior Civil Judge & JMFC,
Arasikere.

ANNEXURE

List of witnesses examined on behalf of Petitioner:

PW.1 : K.V. Prakash
PW.2 : Veerananarayan

List of documents produced on behalf of Petitioner:

Ex.P.1 : Special power of attorney
Ex.P.2 : True copy of order passed by Deputy
Commissioner, Hassan

- Ex.P.3 : Copy of letter written by 2nd respondent to 1st respondent
- Ex.P.4 : Certified copy of gift deed dated 21.12.1999
- Ex.P.5 : Certified copy of gift deed dated 22.12.1999
- Ex.P.6 : Copy of legal notice
- Ex.P.7 : Postal receipt
- Ex.P.8 to 12 : Postal acknowledgements
- Ex.P.13 : Un-served postal cover
- Ex.P.13(a) : Copy of Legal notice
- Ex.P.14(a) : Copy of Legal notice
- Ex.P.14 : Un-served postal cover
- Ex.P.15 : Letter written by the DC, Hassan to Tahasildar, Arsikere.
- Ex.P.16 : Final notice given by the Chief Officer, Municipality, Arsikere
- Ex.P.17 : Letter written by the Project Director to Chief Officer, Municipality, Arsikere
- Ex.P.18 : Endorsement given by Tahasildar, Arsikere
- Ex.P.19 : Letter written by the petitioner to Chief Officer, Municipality, Arsikere.
- Ex.P.20 : Letter written by the petitioner to Chief Officer, Municipality, Arsikere.
- Ex.P.21 : Letter written by the petitioner to DC, Hassan
- Ex.P.22 : Letter written by the petitioner to Tahasildar, Arsikere.

List of witnesses examined on behalf of respondents:

- RW.1 : S. Rajeshwari
- RW.2 : Vijayalakshmi
- RW.3 : K.V. Shivakumar
- RW.4 : Nagajyothi
- RW.5 : K.V. Ramesh

List of documents produced on behalf of respondents:

- Ex.R.1 : Application given to Municipality, Arsikere
- Ex.R.2 : Copy of GPA

- Ex.R.3 : Copy of gift deed dated 17.12.2005
Ex.R.4 : Copy of gift deed dated 17.12.2005
Ex.R.5 : Letter written by Chief Officer,
Municipality, Arsikere
Ex.R.6 : Endorsement given by Chief Officer,
Municipality, Arsikere
Ex.R.7 : Assessment extract
Ex.R.8 : Copy of gift deed dated 17.12.2005
Ex.R.9 : E.C.
Ex.R.10 : Medical prescription
Ex.R.11 : Copy of palu parikattu
Ex.R.12 : Copy of gift deed
Ex.R.13 : Endorsement given by Sub-Registrar
Ex.R.14 : Endorsement
Ex.R.15 : Information letter
Ex.R.16 : Information letter
Ex.R.17 : Statements of Ramesh and
Shashikumar in O.S.25/1994
Ex.R.18 : Endorsement given by Municipality
Ex.R.19 : Letter written by Income Tax
Department
Ex.R.20 : RTC extracts
Ex.R.21 : Endorsement given by Tahasildar
Ex.R.22 : Certified copy of I.A. in O.S.25/1994
Ex.R.23 : Certified copy of I.A. in O.S.25/1994
Ex.R.24 : Certified copy of order on I.A. in
O.S.25/1994
Ex.R.25 : Certified copy of writ petition
Ex.R.26 : Certified copy of order in
W.P.No.16745/2002 and 31731/2002
Ex.R.27 : Certified copy of memo in O.S.25/1994
Ex.R.28 : Original gift deed dated 21.12.1999

**Senior Civil Judge & JMFC,
Arasikere.**