

ORDERS

The present situation has arisen on account of the fact that the Petitioners seek appointment of the Commissioner for the purpose of putting the preliminary decree into effect while the Respondents would object to the same contending that it is a decree of the year 1992 that is sought to be put into effect and the same is highly belated.

2. The question of putting a preliminary decree into motion cannot be assailed on the grounds of limitation which is what has been held by our Hon'ble High Court in ***P.B. Kotturbasappa and Others Vs. K.B. Veerappa since Dead by Lrs and others*** reported in **ILR 2004 KAR 655**, wherein it has been held as under;

18. *In view of the aforesaid declaration of law it is clear that no limitation is prescribed for filing an application for final decree proceedings. In the decision rendered in the case of M. Sunnasab by*

L.Rs. v. Rameezabi (supra) the aforesaid two binding judgments are not brought to the notice of the learned Single Judge who has taken a contrary view. Therefore, the correct legal portion would be this:—

“A preliminary decree in a partition suit, is a step in the suit which continues until the final decree is passed. There is no time period prescribed for filing an application for drawing up of a final decree, in a partition suit. The duty of the drawing up the final decree is that of the Court and neither the Civil Procedure Code nor the Limitation Act specifically provides for any application being made for drawing up or a final decree. An application for drawing up a final decree in a partition suit is an application in a pending suit and is not an execution application such an application could only be considered as a reminder to the Court to follow up its direction given in the preliminary decree.”

Therefore the submission that the application for final decree proceedings has to be filed within 12 years of the preliminary decree has no merit.

Again the Hon'ble Apex Court in **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others** reported (2007) 2 SCC 355 has held as under;

9. A final decree proceeding may be initiated at any point of time. No limitation is provided therefor. However, what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree.

Therefore the question of the Petitioners seeking a belated appointment of Commissioner would not be a fetter upon this Court to put the process in motion. In fact it would be necessary to bear in mind the words of the Hon'ble Apex Court in matters of final decree proceedings in the case of **Kattukandi Edathil Krishnan and Another Vs. Kattukandi Edathil Valsan and Others** reported in 2022 SCC OnLine SC 737 wherein it has been held as under;

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for

drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.

Therefore till such time a final decree is drawn the litigation subsists and as such it is the duty of the Court to take all steps to see that the litigation is brought to an end. Hence, the following;

ORDER

The Tahasildar, Holenarasipura Taluk is requested to send a report as regards the feasibility of dividing the shares amongst the parties as per the preliminary decree dated 30.06.1992 in respect of suit items No.1 to 6. The Assistant Executive Engineer PWD, Holenarasipura Taluk is requested to send a report as regards the feasibility of dividing the shares amongst the parties as per the preliminary decree dated 30.06.1992 in respect of suit item No.7. The officials respectively shall send their reports on or before 22.08.2022.

Office is directed to enclose a copy of the preliminary decree to both the aforesaid officials for their reference.

(PRAVEEN.R.J.S)
CIVIL JUDGE, HOLENARSIPURA.