

KAHS800005162024



Presented on : 16-04-2024
Registered on : 16-04-2024
Decided on : --
Duration :

**IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT HASSAN,HASSAN
Presided Over by DHANALAKSHMI.R**

FDP/3/2024

**Present : Smt. Dhanalakshmi.R., B.Sc.,LL.B.
Senior Civil Judge and J.M.F.C.,
Sakaleshpur.**

F.D.P. No.03/2024

Dated this the 11th day of February 2024

Petitioner :- 1. Sri. A.T. Rajegowda
(R/By: Sri. S.K. Advocate)

V/s

Respondent :- 1. Sri.Swamygowda and another.

(Respondent No.1 and 2 are represented by Sri. S.V.S. Advocate)

I.A.No.I

Applicant :- 1. Sri.Swamygowda

(Respondent No.1 is represented by Sri. S.V.S. Advocate)

V/s

Opponent :- 1. Sri. A.T. Rajegowda

(R/By: Sri. S.K. Advocate)

Stage For filing vakalath for R-2.

i.	Provision under which the application is filed.	U/Sec.151 of CPC.
ii.	Relief sought for	To draw second preliminary decree after enquiry.
iii.	The date on which the application is filed	29.07.2024
iv.	Number of the application	I.A.No.I
v.	The date on which the objection filed by opponents	11.09.2024

vi	The date on which the orders were passed on the said application.	11.02.2025
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ORDERS ON I.A.III

This is an application filed by the respondent No.1 U/Sec.151 of CPC to draw second preliminary decree after enquiry.

2. In the affidavit annexed to the application, the respondent No.1 has stated that the petitioner has filed the present petition on the basis of the judgment and decree in O.S.No.03/2016 dated 17.12.2016. The petitioner has filed the suit for partition and separate possession of the only two suit schedule properties and not included the other joint family properties. The petitioner has filed the suit by not including the family properties which are standing in his name. Hence the suit for partial partition is bad in law. Hence this court has to direct the petitioner to include all the family properties in this petition as final decree proceedings is the continuation of the

suit and after conducting enquiry second preliminary decree has to be drawn. Hence the present application.

3. The petitioner has filed the objection to the application contended that, the respondent No.1 has not filed any written statement in the original suit and even lapse of 8 years, he has not filed any appeal challenging the judgment and decree in O.S.No.03/2016. Further the respondent No.1 is not allowing the petitioner to mutate his name in the suit schedule properties as per the judgment and decree in O.S.No.03/2016. He further contended that except the suit schedule property, no other joint family properties are left out. The present application is filed only with an intention to drag on the proceedings. Hence prays for dismissal of the said application with cost.

4. Heard the learned counsel for the petitioner. The learned counsel for respondent No.1 has not addressed his arguments. Perused the records.

5. The points that arise for consideration are:

POINTS

1. Whether the respondent No.1 has made out sufficient grounds to draw second preliminary decree by conducting enquiry as sought for?

2. What order?

6. The above points are answered as under:-

Point No.1: In the Negative.

***Point No.2: As per final order,
for the following:***

REASONS

POINT No.1:

7. The petitioner has filed the suit against the present respondents and one Smt.Thimmamma in O.S.No.03/2016 for partition and separate possession of the suit schedule properties. The respondent No.1 is arrayed as defendant No.1 and he has appeared as party in person. In the said suit the defendant No.1 to 3 have not filed written statement. The suit is dismissed against defendant No.2 i.e., Thimmamma.

The suit of the petitioner is decreed and held that he is entitled for 1/3rd share in the suit schedule properties. The petitioner has produced the xerox copy of the judgment in O.S.No.03/2016 wherein it is seen that the suit schedule property is Sy.No.112/3 and Sy.No.113/2 respectively.

8. The present application is filed by respondent No.1 to draw second preliminary decree after conducting enquiry as the petitioner has not included all the joint family properties in the suit and hence the suit is bad for partial partition. The said application is opposed by the petitioner on the ground that inspite of lapse of 8 years the said judgment and decree is not challenged and no written statement is filed by defendant No.1/respondent No.1 in the suit, though he has appeared in the suit. The respondent No.1 has filed objection to the main petition, wherein he has taken similar contention as that of the application. It is to be noted that the respondent No.1 neither in the application nor in the

objection to the main petition has not stated the details of the joint family property which are said to be left out by the petitioner. The respondent No.1 has filed the RTC extract of land in Sy.No.113/2 and Sy.No.122/1. The land in Sy.No.113/2 is already included in the suit. On careful perusal of the RTC extract of Sy.No.122/1 it is seen that at column No.9 the name of the person mentioned is V.Rajappa. It is pertinent to note that the respondent No.1 has not stated as to who is V.Rajappa and how he is related to the family of petitioner and respondents. It is to be noted that the name of the petitioner is A.T. Rajegowda S/o Late Thimmegowda. It is to be seen that as rightly contended by learned counsel for the petitioner the defendant No.1 though appeared in the suit in O.S.No.03/2016 has not filed any written statement and inspite of lapse of 8 years he has not challenged the said judgment and decree by filing appeal. Hence the present application without mentioning the details of the joint family property said to be excluded by the

petitioner is not maintainable in order to draw second preliminary decree. Hence this court deems fit to impose costs. Hence for the above said reasons this point is answered in the Negative.

9. POINT NO.:- In view of above findings to point No. and 2 this Court proceeds to pass the following ;

ORDER

I.A. No.I filed by the respondent
No.1 U/Section 151 of CPC is hereby
dismissed with cost of Rs.500/-.

*(Dictated to the stenographer, transcription revised, typed by
her on computer, corrected by me and then pronounced in the
Open Court on this 11th day of February 2025)*

Senior Civil Judge & J.M.F.C.,
Sakaleshpur.