

**ORDER ON THE APPLICATION
FILED BY THE PETITIONER
UNDER ORDER 20 RULE 18(2)
R/w 151 OF CPC.**

Originally this suit has been filed by the plaintiff against the defendants for the relief of partition and separate possession. The defendants No.1 & 2 are brothers of the plaintiff.

This suit was decreed by this Court on 27-02-2016 and the operative part of the order states as hereunder :-

“The suit of the plaintiff is hereby partly decreed.

The plaintiff is entitle for 1/9th share over the suit schedule properties.

Defendant No.1 is entitle to 4/9th share, defendant No.2 is entitle to 4/9th share over the suit schedule properties.

No order as to costs.

Draw preliminary decree accordingly.”

The record reveals that, this order has been challenged before the Hon'ble Senior Civil Judge, Hirekerur as per R.A No.37/2016 which was disposed on 14-02-2018 by confirming the decree passed by this Court. The operative part of the order of the Hon'ble Appellate Court reads as hereunder:-

“Appeal preferred by the

appellant U/o 41 Rule 1 R/w 96 of C.P.C. is hereby dismissed with cost.

Consequently, Judgment and Decree passed in O.S. No.167/2005 dated 27-02-2016 and 17-03-2016 by the Prl., Civil Judge & J.M.F.C., Hirekerur are hereby confirmed.

Draw decree accordingly.”

Office is hereby directed to send records to the Trial Court forthwith along with copy of this judgment and decree.”

Now this application has been moved in view of the judgment of the Hon'ble Apex Court in Civil Appeal Diary No.32601/2018 between Vineeta Sharma V/s. Rakesh Sharma and others, wherein it is clearly held that, “Notwithstanding that a preliminary decree has been passed the daughters are to be given share in co-parcenary property, equal to that of a son in pending proceedings for final decree or in an appeal.”

FDP has been filed based on the preliminary decree as FDP No.3/2019 and it is pending for disposal before this Court itself. The notices were issued to the respondents calling for objections to this application, the learned counsel for the respondent No.1 and 2 filed objections. Wherein it is contended that reasons stated in the affidavit are false, the decision

of Hon'ble Apex Court is not binding on the petitioner as it is passed after the disposal of R.A. Petitioner is not entitled to 1/3rd share and therefore this application is not maintainable. Hence prays for rejection of this application.

In view of the aforesaid judgment of the Hon'ble Apex Court which has clearly held that the daughter has to be given equal share to that of a son, this Court is bound to allot the share to the daughter who is the plaintiff in this case equal to the share of the sons. Hence, this application has to be allowed as per the directions of the Hon'ble Apex Court.

The record reveals that only share as per the notional partition was given to the plaintiff. If the plaintiff is allotted with the equal share as that of sons, the shares allotted to defendants No.1 to 2 would also get changed. With these observations, this Court proceeds to pass the following;

ORDER

The IA No.II filed by the plaintiff U/Sec.151 of CPC is hereby allowed.

The plaintiff shall be entitled to 1/3rd share in all the suit schedule properties.

The defendants No.1 & 2 are entitled to 1/3rd share each in all the suit schedule properties.

The remaining part of the

F.D.P. No.03 of 2019

decree shall remain the same.

The office is hereby directed to amend the preliminary decree as aforesaid.

Addl. Civil Judge and JMFC
Hirekerur.