



IN THE COURT OF THE III ADDL.SENIOR CIVIL JUDGE
AND J.M.F.C, RANEBENNUR

Present: Smt.Nivedita M.Munavallimath.,
B.Com.,LL.M

III Addl.Senior Civil Judge & JMFC,
Ranebennur.

Dated this the 12th day of January 2023

FDP.No.30/2020

Petitioners: 1. Smt: Hanumavva W/o Tirakappa Soppin
Age: 63 years, Occ: Household work,
R/o: Menasinahal, Taluka: Ranebennur,
Dist: Haveri and others.

(By Sri.N.K.K.Advocate)

V/s

Respondents: 1. Smt: Rudramma W/o Shiddappa Kurubar
Since deceased by her LR's

1(a) K.Yallappa S/o Shiddappa
Age: 55 years, Occ: Agrist,
R/o: Nandigavi, Taluka: Harihar,
Dist: Davanagere and others.

(By Sri.P.R.K.Advocate for R-1(a) to 1(h))

(By Sri.C.H.K.Advocate for R-2 to 7)

I.A.No.V

Opponents: 1. Smt: Rudramma W/o Shiddappa Kurubar
Since deceased by her LR's

1(a) K.Yallappa S/o Shiddappa
Age: 55 years, Occ: Agrist,



R/o: Nandigavi, Taluka: Harihar,
Dist: Davanagere and others.

V/s.

(Applicants) 1. Smt: Hanumavva W/o Tirakappa Soppin
and others.

ORDER ON IA.No.V

The respondents have filed IA.No.V U/o 20 rule 18 R/w Section 151 of CPC, praying to modify the preliminary decree and award ½ share to the plaintiff in OS.No.165/2014.

2. The application is accompanied with affidavit duly sworn by respondent No.1(a). It is stated in the petition that this Court awarded ½ share to defendant No.1 in OS.No.165/2014. But the appellate Court modified the decree in RA.No.128/2018 and awarded 3/4th share to defendant No.1. But in view of Judgment rendered by the Hon'ble Apex Court, defendant No.1 is entitled to ½ share in the suit schedule properties and prays to modify the preliminary decree.

3. Per contra, the petitioners have filed objection stating that the application is not maintainable either under law or on facts. Further contended that the Hon'ble Appellate Court modified the decree and awarded ¼th share to the plaintiffs and 3/4th share to defendants. Therefore, the Judgment and decree passed in RA.No.128/2018 has attained finality and hence the application is deserves to be dismissed.



4. Heard both side and perused the records.
5. The following points that arise for my consideration is:
 1. Whether the respondents have made out sufficient ground to modify the Preliminary decree as sought for?
 2. What order?
6. My findings to the above points are as following:
 - Point No.1 : In the **negative** and
 - Point No.2 : As per final order for the following:

REASONS

7. **Point No.1:-** The petitioners have filed the present petition to draw final decree proceedings as per the preliminary decree passed in RA.No.128/2018. On going through the documents produced by the respondents and the objection filed by the petitioners, it appears that defendant No.2 to 4 have preferred an appeal against the Judgment and decree passed in OS.No.165/2014 before the Hon'ble II Additional District and Sessions Judge, Ranebennur, in RA.No.128/2018. The said RA.N.128/2018 filed by defendant No.2 to 4 came to be allowed and the Hon'ble first Appellate Court modified the decree passed by this Court and declared that the legal heirs of plaintiff are together entitled to 1/4th share in the suit schedule properties.

8. It is relevant to note that the Hon'ble Apex Court in the case of **Veenita Sharma**, held that daughter is a co-parcener and



she has equal right as of a so. It is pertinent to note that in the application the respondents stated that they are entitled to equal share on the basis of dictum laid down by the Hon'ble Apex Court. But they have not furnished the material particulars regarding status of respondents in the joint family with the propositus and even not attempted to produce the copy of plaint, Judgment and decree passed in OS.No.165/2014. The respondents have produced the certified copy of decree which is not sufficient to pass suitable order regarding quantum of share/ modification decree as claimed in the application.

9. It is relevant to note that the respondents have produced certified copy of decree passed in RA.No.128/2018. Thus, it is clear from the records that the quantum of share is already modified and decided by the Hon'ble first Appellate Court in RA.No.128/2018. The respondents have not produced copy of Judgment and decree passed in RA.No.128/2018 to peruse about the observations and findings of the First Appellate Court in modifying the share of the parties. In the absence of same and in the absence of materials particulars regarding status and relationship of respondents with the propositus, it is difficult to apply the principle laid down by the Hon'ble Apex Court in Veenita Sharam case. Accordingly, I answer the above point No.1 **in the Negative.**

10. Point No.2: - For the foregoing reasons, I proceed to pass the following :-



ORDER

*IA.No.V filed by the respondents U/o 20 Rule
18 R/w Section 151 of CPC, is hereby dismissed.*

*[Dictated to the Stenographer directly on computer typed by her, after transcription,
the same is corrected and then pronounced by me in the open court on this 12th day of
January – 2023).*

***III Addl. Senior Civil Judge & JMFC.,
Ranebennur.***

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