

ORDER ON IA NO. 10

Petitioners have filed the present application under order 20 rule 18 of CPC seeking modification of share passed in the preliminary decree in view of ratio laid down by the Hon'ble Apex court in the case of **Vineetha Sharma V/s Rakesh Sharma**.

2. In support of the application, the petitioner No.1 has sworn to the affidavit and contended that, they had filed a suit for partition and separate possession and the same was came to be decreed providing notional share. It is further contended that, by virtue of the a recent decision of the Hon'ble Apex Court passed in **Vineetha Sharma V/s Rakesh Sharma**, the notional share allotted in preliminary decree needs to be modified as 1/6th each share. Hence, she sought for modification of preliminary decree.

3. The copy of the application has duly served upon the other side, respondent No.10 alone filed objection contending that, the application is not maintainable in the eye of law and liable to be rejected. It is further contended that, he had filed a suit in OS No.232/2009 seeking declaration to declare the preliminary decree in question passed in OS No.329/2001 is not binding upon him. The same was came to be decreed in part holding that, he having rights in the suit item No.1 property to the extent of 7/18th share of his vendor. The same is challenged in RA No.37/2015 and the same

came to be dismissed and RSA No.100135/2018 is pending for consideration. In such circumstances, the modification of preliminary decree in respect of suit item No.1 property is not sustainable and prayed to dismiss the application so far suit item No.1 property which he has purchased. Other defendants neither contested the petition nor this application.

4. Heard the counsel for respective parties. The points that arise for the consideration of this court are:

(i) Whether the preliminary decree passed in favour of the petitioners is to be modified in view of ratio laid down by the Hon'ble Apex court in the case of **Vineetha Sharma V/s Rakesh Sharma. ?**

(ii) What order.?

5. After carefully perusing the records available before it at this stage, this court proceeds to answer the afore raised points for consideration as under:

(a) Point No. i : In the Affirmative.

**(b) Point No. ii : As per the final orders,
for the following .**

REASONS :

6. Point No.(i):

At the very outset it is necessary on the part of this court to clarify that the application is one for modification of preliminary decree passed in a suit for partition and separate possession. It is

well settled principle of law that, any number of preliminary decree can be passed and modified and even during the proceedings initiated for drawing of final decree. From the perusal of the history of this litigation, it is clear that, the petitioners herein had filed a suit for partition and separate possession in O.S. No. 329/2001, the same came to be decreed holding that, the Plaintiffs are entitled to their 1/3rd share in the suit properties.

6.1. The records disclose that, the said decree was not challenged any Defendants. However, Respondents No.10 claiming to be the purchaser of suit item No.1 property had filed a suit in OS No.232/2009 seeking declaration to declare that, the decree passed in OS No. 329/2001 in favour of the Petitioners as null and void and not binding on him. The same was decreed in part holding that, the respondent No.10 is entitled 7/18th share of his vendor in respect of suit item No.1 property. Further, it is also show that, the respondent No.10 challenged the said decree in RA No.37/2015 and the same came to be dismissed and a second appeal is preferred in RSA No.100135/2018 and pending for consideration.

6.2. Admittedly, there is no stay of proceedings of this case. There is no materials to show any pendency of appeal against the preliminary decree in question. Suit schedule 1 properties are agricultural properties and suit schedule 2 properties are house

properties. The decree passed in OS No.232/2009 in favour of respondent No.10 is only with regard to suit item No.1 property bearing survey No.843A/3. So far, other decreed schedule properties and 11/18th share in suit item No.1 of schedule 1 property are concerned there is no objection by respondents to modify the decree.

6.3. Now, in view of modification of law on copercenary property as per the ratio laid down by the Hon'ble Apex court in the case of ***Vineetha Sharma V/s Rakesh Sharma***, the present application is being filed. The counsel for petitioners has argued that, since the daughters having the equal rights by birth as per the ratio laid down by the Hon'ble Apex court in Vineetha sharma's case, the preliminary decree is to be modified.

6.4. Petitioner No.1 & 2 are the Plaintiff No.1 & 2. Petitioner No.3(a) to 3(d) are Lrs of original Plaintiff No.3. Petitioners No.4(a) to 4(g) are the Lrs of Plaintiff No.4. Respondents No.1 to 6 are the Lrs of Defendant No.1. Respondents No.7(a) to 7(d) are the Lrs of Defendant No.2(a) and Respondent No.8 is Defendant No.2(b). Respondent No.3 is Defendant No.3. Respondents No.10 to 12 are the purchasers.

6.5. In view of change of law as per Vineetha Sharma's case, the principles of notional partition have no application to the facts of

the case where the ratio of Vineetha sharma's case applies. In such circumstances, the preliminary decree is required to be modified.

6.6. In the case of **Vineetha Shara** (supra), the Hon'ble Apex Court ruled that, the amendment granting equal coparcenary rights to daughters is retroactive, it applies from the date of birth of the daughter, not from the date of the amendment. Further, also recognized a full share to the daughter in the joint family/coparcener property. Even in an Appellate Proceeding or a Final Decree Proceeding the shares and entitlement of the parties even if determined earlier would have to be redetermined in terms of the decision and principles laid in the Case. Since, the final decree has to be drawn in the present case, the preliminary decree of notional partition has to be modified.

6.7. The genealogy shown in the preliminary decree passed in OS No.329/2001 clearly shows that, Plaintiffs and original defendants No.1 & 2 are children of propositus. Admittedly, there is no decree in favour of Defendant No.3 and he is not a family member. Hence, he is not entitle for any modification of share. The petitioners No.1 & 2 being Plaintiffs No.1 & 2 are entitle for 1/6th share each. Petitioners No.3(a) to 3(d) being Lrs of Plaintiff No.3, they are collectively entitle for 1/6th share in the suit properties. Petitioners No.4(a) to (g) being Lrs of Plaintiff No.4, they are

collectively entitle for 1/6th share in the suit properties. Respondents No.1 to 6 being Lrs of original defendant No.1 they are collectively entitle for 1/6th share in the suit properties. Respondents No.7(a) to 7(d) and Respondent No.8 being Lrs of Defendant No.2, they are collectively entitle for 1/6th share in the suit properties.

6.8. So far, Respondent No.10 is concerned he had filed a suit in OS No.232/2009 and the same was challenged in RA No.37/2015 in which the decree was modified and it was held that, respondent No.10 is entitle to the share of Cholappa S/o Mariyappa in suit item No.1(a) property of OS No.329/2001. Accordingly, this court finds no hesitation in holding Point No.1 in the **Affirmative.**

7. Point No.2:

In view of the fact that point No.1 is held in the negative, this court passes the following:

ORDER

“IA No-10 filed under Order 20 Rule 18 of CPC by the petitioners is hereby allowed.

The preliminary decree passed in OS No.329/2001 is hereby modified in following terms;

1. Petitioners No.1 & 2 being Plaintiffs No.1 & 2 are entitle for 1/6th share each.

2. Petitioners No.3(a) to 3(d) being Lrs of Plaintiff No.3 are collectively entitle for 1/6th share in the suit properties.

3. Petitioners No.4(a) to (g) being Lrs of Plaintiff No.4 are collectively entitle for 1/6th share in the suit properties.

4. Respondents No.1 to 6 being Lrs of original defendant No.1 are collectively entitle for 1/6th share in the suit properties.

5. Respondents No.7(a) to 7(d) and Respondent No.8 being Lrs of Defendant No.2 are collectively entitle for 1/6th share in the suit properties.

6. Respondent No.10 is entitle to the share of Cholappa/Respondent No.1 in suit item No.1 (a) property.

7. Accordingly, Office is directed to draw the preliminary decree and put up along with this case.

8. No order as to cost.

Call on for taking further steps by to proceed with the case by 19.02.2026.”

Sd/-

**Prl. C.J. & JMFC.,
Ranebennur.**

