

ORDER ON IA NO. 3

The petitioner has filed the present application under order 20 rule 18 R/w Sec. 151 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 has sworn to the affidavit and contended that, she had filed the suit for partition and separate possession in O.S. No. 215/1989 and the same was decreed holding that, she is entitled for notional share of 2.5/100th share in the suit properties. The said decree was reached up to the Hon'ble Apex court and remanded to the Hon'ble High Court. The same were rejected and the said preliminary decree has attained finality. Hence, she has initiated this final decree proceedings. 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 1/9th each share in the suit properties. Hence, she sought for modification of preliminary decree.

3. The copy of the application has duly served upon the other side. The respondent No. 1 has filed objection to the application

contending that, the application is not maintainable in the eye of law nor on facts. It is further contended that, since the preliminary decree is already passed and he has filed the objection to the main petition, the petitioner is not entitled for any modification of share as claimed by her. It is further contended that, the ratio laid down by the Hon'ble Apex court in the aforesaid decision is not applicable to the present case. Among these grounds, he sought for dismissal of the application. Other respondents have not filed any objection to the application.

4. Heard the counsel for respective parties and the memo with decision relied by them was taken on record. The points that arise for the consideration of this court are:

(i) Whether the preliminary decree passed in favour of the petitioner 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):

6.1). 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 petitioner herein had filed a suit for partition and separate possession in O.S. No. 215/1989, the same came to be decreed holding that, she is entitle for 2.5/100th share in the suit properties. The records disclose that, the said decree was challenged in RA No. 26/1982 and the same was came to be dismissed confirming the preliminary decree.

6.2). Against the said dismissal, the aggrieved defendant No.1 preferred an appeal in RSA No.2159/2006 and the same was came to be dismissed. Further, a revision petition was also preferred in RP No.1612/2012 and the same was also dismissed. Against the said dismissal, the defendant No.1 had preferred Civil Appeal before the Hon'ble Apex court in Civil Appeal No.13686/2015, wherein considering the ratio laid down in the case of Prakash V/s

Pulavathi, the appeal was allowed and remanded for consideration in RSA pending before the Hon'ble High Court. Thereafter, by its judgment dated 31.05.2017, the RSA No.2159/2016 was again dismissed confirming the preliminary decree passed in favour of the petitioner.

6.3). Now, in view of modification of law on coparcenary 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 petitioner 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. The petitioner is entitled for 1/9th each share instead of notional partition granted in her favour. In support of his contention has relied upon the decision of Hon'ble High Court of Karnataka passed in the case of **B.S. Uma V/s B.S. Ranganath & others**- 2025(1)KCCR 578 (DB).

6.4). Per contra, the counsel for respondent No.1 argued that, the ratio laid down in the decision of Vineetha Sharma's case is not applicable to the present case. In this regard, he contended that, the present suit filed prior to Karnataka Amendment Act-1994 and the petitioner can not be considered as coparcener. In support of

his contention has relied upon the decision of Hon'ble High Court of Karnataka passed in the case of **Susheelamma V/s Seetharamayya**-RSA No.2586/2010.

6.5). The only contention of the respondent No.1 is that, as per the decision of Hon'ble High Court in the case of Susheelamma(supra), the ratio laid down in Vineetha Sharma's case is applicable only to the cases where suit were filed between 30.07.1994 to 08.09.2005. I have gone through said decision relied by the counsel for respondent No.1, wherein in the said decision itself has held that, the daughters' right have to be decided in the light of the law laid down by the Hon'ble Apex court and shares have to be modified. In the said litigation, the final decree was drawn in the year of 2009 prior to the ratio laid down in the Vineetha Sharma's case. Hence, the contention urged by the counsel for respondent No.1 is not acceptable and the decision relied by him is not applicable to the facts of the present case.

6.6). On going through decision relied by the counsel for petitioner passed in the case of B.S. Uma(supra), in a similar set of facts, the Hon'ble High Court has clearly held that, in view of change of law as per Vineetha Sharma's case, the preliminary

decree was modified. And also held that, the principles of notional partition have no application to the facts of the case where the ratio of Vineetha sharma's case applies.

6.7). 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.

6.8). Since, the final decree has to be drawn in the present case, the preliminary decree of notional partition has to be modified. On going through the records, it discloses that, originally the plaintiff has filed this suit against the defendants No. 1 to 9. Defendant No.1 who is the mother of the parties has reported as died leaving behind her Lrs who are already on record as plaintiff and defendant No.2 to 9. In view of the ratio laid down by the Hon'ble Apex court in the case of Vineetha Sharma(supra) and in view of death of defendant No.1, the plaintiff and defendants No. 2 to 9

are entitle for 1/9th each share in the suit properties. 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-3 filed under Order 20 Rule 18 of CPC by the Petitioner is hereby allowed.

The preliminary decree passed in OS No.215/1989 is hereby modified.

The Plaintiff and defendants No.2 to 9 are entitle for 1/9th each share in the suit properties.

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

No order as to cost.

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

Sd/-

**(ADITHYAKUMAR H.R)
Prl. C.J. & I Addl. JMFC.,
Ranebennur.**

(Order pronounced in open court vide separate order)

ORDER

“IA No-3 filed by the proposed defendants under Order 1 Rule 10(2) of C.P.C. is hereby dismissed.

No order as to cost.

**Call on for hearing on IA No.1
by; 18-07-2025.”**

**(ADITHYAKUMAR H.R)
Prl. C.J. & I Addl. JMFC.,
Ranebennur.**