



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS, SAVANUR.**

**PRESENT : SRI. SRINIVASA.S.N,  
B.A., LL.M.**

Civil Judge and JMFC,  
SAVANUR.

**F.D.P.No.2/2015**

**DATED THIS 6<sup>TH</sup> DAY OF MARCH, 2026**

**Petitioners:  
(Plaintiffs)**

- 1.** Najeerahammad S/o Gousumiya  
Koitewale  
Since dead represented by his LRs:-
- 1(A).** Smt. Rahimbi W/o Najeerahammad  
Koitewale  
Age: 70 Years, Occ: Household work  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri
- 1(B).** Abdulrawoof S/o Najeerahammad  
Koitewale  
Age: 51 Years, Occ: Agriculture  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri
- 1(C).** Jilani S/o Najeerahammad Koitewale  
Age: 49 Years, Occ: Agriculture  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri
- 1(D).** Maheddin S/o Najeerahammad  
Koitewale  
Age: 47 Years, Occ: Agriculture  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri
- 1(E).** Smt. Haleema W/o Jilani Vijapur  
Age: 45 Years, Occ: Household work  
R/o: Gadag  
Tq: Gadag, Dist.: Gadag
- 1(F).** Mustakahmed S/o Najeerahammad  
Koitewale



Age: 43 Years, Occ: Agriculture  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri

**1(G).** Imamhusen S/o Najeerahammad  
Koitewale

Age: 41 Years, Occ: Agriculture  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri

**1(H).** Altaf S/o Najeerahammad Koitewale

Age: 39 Years, Occ: Agriculture  
R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri

**[By Sri. F.N.Nellur, Advocate]**

**V/s.**

**Respondents :**  
**(Defendants)**

1. Abdulgafar S/o Meersaheb Koitewale  
Age: 63 Years, Occ: Agriculture,
2. Ibrahimsab S/o Meersaheb Koitewale  
[DEAD]  
(R-2 deleted as per the order dated  
14-06-2018)
3. Mahammadhanifsab S/o Meersaheb  
Koitewale  
Age: 66 Years, Occ: Agriculture,
4. Abdulkhadar S/o Ahammadsaheb  
Koitewale  
Age: 51 Years, Occ: Agriculture,
5. Usmansab S/o Ahammadsaheb  
Koitewale  
Age: 49 Years, Occ: Agriculture,
6. Ismailsab S/o Ahammadsaheb  
Koitewale  
Age: 47 Years, Occ: Agriculture,
7. Ibrahimsab S/o Modisab Ritti  
Age: 52 Years, Occ: Agriculture,
8. Abdulgafarsab S/o Modisab Ritti  
Age: 50 Years, Occ: Agriculture,



9. Najeerahammadsab S/o Modisab Ritti  
Age: 48 Years, Occ: Agriculture,

10. Smt. Rokhabi W/o Hajaresab Koitewale  
Age: 73 Years, Occ: Household work,  
All are R/o: Koripete, Savanur,  
Tq: Savanur, Dist.: Haveri

**[R-1 - In person]**

**[R-2, R-3, R-9 and R-10 - Ex-parte]**

**[R-4 to R-6 by Smt. S.S.Keriyavar, Advocate]**

**[R-7 and R-8 by Sri. V.R.Ayyannanavar, Advocate]**

### **ORDER ON MAIN PETITION**

This petition is filed by the petitioner under Order XX Rule 18 read with Section 54 of CPC seeking to draw the final decree in terms of the preliminary decree passed by this Court in O.S. No.97/2002, by allotting 2/8th share to the petitioner in the suit property, in the interest of justice and equity.

#### **2. The averments of the Petition in brief are as follows:**

The brief facts of the petition are that the petitioner had filed O.S. No.97/2002 against the defendants for partition and separate possession in respect of the suit schedule property. After trial, this Court by its judgment and decree dated 18-08-2005 decreed the suit and declared that the petitioner is entitled to 2/8th share in the suit property and the defendants are jointly entitled to the remaining 6/8th share. It is further stated that



thereafter the petitioner had filed FDP No.2/2007 seeking drawing of final decree. However, due to illness of the petitioner, the said petition came to be dismissed for default on 13-04-2010. Hence, the present petition is filed seeking to draw the final decree in terms of the preliminary decree.

**3.** After issuance of the notices, respondent No.4 to 6 appeared through their counsel. Respondent No.7 and 8 also appeared through their counsel. Though notice was served on Respondent No.2, 3, 9 and 10, they remained absent and were placed ex-parte. Respondent No.1 appeared and sought time to engage counsel. Though sufficient opportunity was granted, the respondents have not filed any objections to the main petition and therefore the objections to the main petition are taken as not filed.

**4.** During pendency of the proceedings, the original petitioner died. Hence, the learned counsel for the petitioner filed I.A. No.1 seeking to bring the legal heirs of the deceased petitioner on record and the same was allowed and the legal representatives were brought on record. It is also reported that the respondent No.2 died during the pendency of proceedings and the learned



counsel for the petitioner filed a memo stating that the said respondent died leaving no legal heirs.

**5.** Thereafter the petitioner has filed I.A.No.II seeking to appoint the Court Commissioner to effect the partition of the property. Hence, this court has allowed the I.A.No.II.

a) The Court Commissioner initially submitted his report. The learned counsel for the petitioner contended that the Commissioner had not properly shown the boundaries and existence of the suit property. On perusal of the report, this Court found it necessary to re-issue the Commissioner warrant. Accordingly, the warrant was re-issued on 21-07-2022 with specific directions to submit a detailed report along with boundaries and sketch.

b) Thereafter the Commissioner again submitted his report. The petitioner filed objections to the same. The Taluk Surveyor also submitted a report stating that the warrant could not be properly executed due to difference in measurement of the suit property. In view of the said circumstances, this Court issued witness summons to the second Court Commissioner. Subsequently, this Court directed the Commissioner to carry out



the commissioner work afresh in accordance with the preliminary decree.

c) Thereafter, the third Court Commissioner conducted the survey and submitted his report before the Court. The learned counsel for the petitioners and the learned counsel for Respondent No.7 and 8 submitted that they have no objection to the third Commissioner report.

d) However, the learned counsel for Respondent No.4 to 6 filed objections to the third Commissioner report. The main contention raised in the objections is that as per the Commissioner report the suit property, which was earlier described in the preliminary decree as Sy.No.52/4A measuring 7 guntas, has been phoded and renumbered as Sy.No.52/5 measuring 7 guntas. It is contended that Sy.No.52/5 measuring 7 guntas belongs to Respondent No.3 to 5, and therefore the Commissioner has wrongly identified the suit property and the report is not in accordance with the preliminary decree. Hence they prayed to reject the Commissioner report.

**6.** Heard the arguments of the both sides counsels and perused the materials placed on record.



7. The following points arise for consideration of this court are.

### **P O I N T S**

**Point No.1:** Whether the Petitioners have made out grounds for drawing the final decree in respect of the petition schedule property as per preliminary decree passed in O.S.No.97/2002?

**Point No.2:** What Order?

8. The findings of this court on the above points are as under:

**Point No.1:** In the Affirmative

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

### **R E A S O N S**

9. **POINT No.1:-** The petitioner had filed O.S. No.97/2002 against the defendants for partition and separate possession in respect of the suit schedule property. After trial, this Court by its judgment and decree dated 18-08-2005 decreed the suit and declared that the petitioner is entitled to 2/8th share in the suit property and the defendants are jointly entitled to the remaining 6/8th share. It is further stated that thereafter the petitioner had filed FDP No.2/2007 seeking drawing of final decree. However, due to illness of the petitioner, the said petition came to be dismissed for default on 13-04-2010. Hence, the present petition



is filed seeking to draw the final decree in terms of the preliminary decree.

**10.** Though some of the respondents appeared through their counsel they have not filed any objection to the main petition. Therefore the objections to the main petition are taken as not filed.

**11.** Further, the petitioner has filed I.A.No.II to appoint the Court Commissioner to effect the partition of the petition schedule properties as per the preliminary decree passed in O.S. No.97/2002. Hence, this court has allowed the I.A.No.II.

**12.** The Court Commissioner initially submitted his report. The petitioner counsel contended that the Commissioner had not properly shown the boundaries and existence of the suit property. Accordingly, this court re-issued the commissioner warrant.

**13.** Thereafter the Commissioner again submitted his report. The petitioner filed objections to the same. The Taluk Surveyor also submitted a report stating that the warrant could not be properly executed due to difference in measurement of the suit property. In view of the said circumstances, this Court issued witness summons to the second Court Commissioner.



Subsequently, this Court directed the Commissioner to carry out the commissioner work afresh in accordance with the preliminary decree.

**14.** Thereafter, the third Court Commissioner conducted the survey and submitted his report dated 15-10-2025 before the Court. The learned counsel for the petitioners and the learned counsel for Respondent No.7 and 8 submitted that they have no objection to the third Commissioner report. However, the learned counsel for Respondent No.4 to 6 filed objections to the third Commissioner report. The main contention raised in the objections is that as per the Commissioner report the suit property, which was earlier described in the preliminary decree as Sy.No.52/4A measuring 7 guntas, has been phoded and renumbered as Sy.No.52/5 measuring 7 guntas. It is contended that Sy.No.52/5 measuring 7 guntas belongs to Respondent No.3 to 5, and therefore the Commissioner has wrongly identified the suit property and the report is not in accordance with the preliminary decree. Hence they prayed to reject the Commissioner report.

**15.** This Court has carefully perused the third Commissioner report, sketch, records and the preliminary decree. After



considering the said reports, it is very clear that before making the local inspection in commissioner report, he has clearly stated that, he has issued notices to all the parties, some of the petitioners were present and respondents were absent at the time of determination of shares. The Court commissioner have conducted the survey, then prepared the sketch.

**16.** In the report, the Commissioner has specifically mentioned that the survey records, present RTC extracts and the property description in the preliminary decree are not tallying with each other due to subsequent phodi and renumbering carried out by the revenue authorities. The Commissioner has further stated that on verification of available revenue records and field inspection, the land earlier bearing Sy.No.52/4A measuring 7 guntas has been sub-divided and presently corresponds to Sy.No.52/5 measuring 7 guntas. The Commissioner has also prepared a sketch showing the location and extent of the property.

**17.** It is to be noted that in a final decree proceeding, the Court is primarily required to effect partition in terms of the preliminary decree and for that purpose the Court Commissioner identifies the property with the assistance of revenue records and field measurements. Merely because the survey number has undergone



phodi or renumbering in revenue records, it cannot be said that the Commissioner report is contrary to the preliminary decree, if the property can otherwise be identified with reference to its extent and location.

**18.** In the present case, except making a bare contention that Sy.No.52/5 belongs to Respondent No.3 to 5, the objectors have not produced any convincing material to show that the Commissioner has wrongly identified the property or that the land mentioned in the preliminary decree is entirely different from the property identified by the Commissioner.

**19.** On the other hand, the Commissioner being a technical officer, has inspected the spot with the assistance of revenue records and has clearly explained the change in survey number due to phodi proceedings.

**20.** On perusal of the third commissioner report dated 15-10-2025, it is noted that the Commissioner have filed report in the best interest of the parties. In the sketch produced along with the report, it reveals that the court commissioner have shown separately the share of the parties by tentatively dividing the petition schedule property which is clearly shown in the sketch as follows;



a) Sy.No.52/4A (New Sy.No.52/5) measuring 07 G of Savanur village.

Sl. No.	Portion	Allotted to	Share allotted	Measurement A-G-A
1	I	Petitioners	2/8	00-01-12
2	II	Respondents	6/8	00-05-4
Total				00-07-00

**21.** This Court is of the opinion that the said allotment of the property made by the Court Commissioner is in accordance with law and convenience of the property available on spot and there is no hindrance to allot the property as shown in the Commissioner report. Therefore, this court found no grounds to reject or for re-demarcation of the property by the Court Commissioner. Therefore the petitioners and respondents are entitled for the property as per the division made by the Court Commissioner in pursuance to the order of this court. Therefore, this Court finds no sufficient grounds to discard the third Commissioner report. Accordingly, the objections filed by Respondent No.4 to 6 to the third Commissioner report are liable to be rejected.



**22.** At the time of arguments counsel for petitioners and respondent no.7 and 8, submitted that they have no objection to the third commissioner report. Hence, the third report submitted by court commissioner is hereby accepted. The report submitted by court commissioner become part and parcel of this final decree. In view of the preliminary decree passed in O.S. No.97/2002, the petitioners being the legal representatives of the original petitioner are entitled to 2/8th share in the suit schedule property. Accordingly the parties are entitled for final decree in this regard. Therefore, this court answered ***point No.1 in the Affirmative.***

**23. POINT No.2:** For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

### **ORDER**

The petition filed under Order 20 Rule 18 read with Section 54 of CPC, is hereby allowed.

Further, in terms of the Court Commissioner's report dated 15-10-2025 and the hand sketch annexed thereto,

- a) Petitioners are jointly allotted Portion-I measuring 01 Gunta 12 Annas in petition Schedule property.
- b) Respondents are jointly allotted Portion-II measuring 05 Guntas 4 Annas in petition Schedule property.



Report of the Court Commissioner dated 15-10-2025 and the handsketch map shall be part and parcel of this final decree.

The petitioners and respondents are directed to furnish Non-judicial stamp for drawing final decree.

Draw final decree in accordance with Court Commissioner's report and sketch as directed above.

*(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in Open Court, on this the 6<sup>th</sup> day of March, 2026)*

**(SRINVASA. S.N)  
CIVIL JUDGE & JMFC.,  
SAVANUR**

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