

IN THE COURT OF THE CIVIL JUDGE, SAVANUR.

Present: **Sri. BALASAHEB WADAVADE,**
B.Com., LL.B. (Spl)
Civil Judge and JMFC.,
Savanur.

Dated this the 22nd day of October, 2018

F.D.P No.06/2012

PETITIONERS:

- Smt. Khadarbi W/o
AbdulRahimansab Momin.
Since deceased by her LRs
- 1A NoorAhammad S/o AbdulRahiman
Momin
Age: 42 years, Occ: Agriculture
R/o: Karadagi, Tq. Savanur
Dt. Haveri.
- 1B Davalasab S/o AbdulRahiman
Momin
Age. 40 years, Occ: Agriculture
R/o. Karadagi, Tq. Savanur
Dt. Haveri.

(By Sri F. N. Nellur, Adv.)

Vs

- RESPONDENTS:** 1. Hajaresab S/o Hasansab Shiggavi
Age. 40 years,
Occ: Agriculture
R/o. Karadagi. Tq. Savanur
Dist: Haveri
2. Davalsab S/o Hasansab Shiggavi
Age. 39 years,
Occ: Agriculture, R/o. Karadagi.
Tq. Savanur Dist: Haveri

3. Smt. Bebijan W/o Khasimsab
Shiggavi
Age. 35 years,
Occ: House Hold Work,
R/o. Kardagi Tq. Savanur
Dist: Haveri.
4. Smt. Jilekhab W/o Fakrusab
Konnanavar
Age. 70 years, Occ: House Hold
Work, R/o. Karadagi Dt. Haveri.
5. MaqbulAhammad S/o Fakrusab
Shiggavi Age. 48 years,
Occ: Agriculture
R/o. Karadagi Tq. Savanur
6. NajeerAhammad S/o Fakrusab
Shiggavi Age. 47 years,
Occ: Agriculture
R/o. Karadagi Tq. Savanur
7. ShabbirAhammad S/o Fakrusab
Shiggavi Age. 46 years,
Occ: Agriculture
R/o. Karadagi Tq. Savanur
8. Riyaz S/o Fakrusab
Shiggavi Age. 30 years,
Occ: Agriculture
R/o. Karadagi Tq. Savanur
9. Sattar S/o Fakrusab
Shiggavi Age. 29 years,
Occ: Agriculture
R/o. Karadagi Tq. Savanur

10. Smt. Shamashabegam W/o
Hajaresab Shiggavi Age. 35 years,
Occ: House Hold Work
R/o. Karadagi, Tq. Savanur
Dt.Haveri
11. Balakash S/o Fakrusab
Shiggavi Age. 28 years,
Occ: House hold work
R/o. Karadagi Tq. Savanur
12. Rahina D/o Fakrusab
Shiggavi Age. 27 years,
Occ: House hold work
R/o. Karadagi Tq. Savanur
13. Sirin S/o Fakrusab
Shiggavi Age. 26 years,
Occ: House hold work
R/o. Karadagi Tq. Savanur
14. Suraya S/o Fakrusab
Shiggavi Age. 25 years,
Occ: House hold work
R/o. Karadagi Tq. Savanur

ORDER

The petitioners have filed this petition under order XX Rule 11 & 12 of Code of Civil Procedure praying to pass the final decree awarding his 1/9th share in the suit properties as per the preliminary decree passed in O.S. No.36/2002 dated 18-12-2003.

The mother of the petitioners by name Khadarbi W/o Abdul Rahimansab Momin, have filed a suit against the defendants-respondents for partition and separate possession of his 1/9th share in the suit schedule property in OS No. 36/2002 on the file of this Hon'ble Court. The suit filed by the petitioners mother, came to be decreed on 18-12-2003.

Therefore, as per the preliminary decree passed in the said OS No. 36/2002 the petitioner got 1/9th share in the suit schedule properties. The respondents have not given share to the petitioners. Therefore, the petitioners are entitled to get their separate share by effecting the partition in the suit schedule properties. Hence, the petitioners have filed this petition for actual partition and separate possession of their respective shares as per the preliminary decree.

2. The respondents have not given share to the petitioners as per the preliminary decree passed in OS No.36/2002 in the suit properties. Hence, they prayed for to allot the 1/9th share to the petitioners and deliver the actual possession of the suit schedule properties.

3. The notice of the petition served upon the respondents. The respondents appeared in this petition but they have not filed objection to the petition.

4. Both the parties have not adduced any evidence on their behalf.
5. Heard arguments on the both sides and perused the materials on records.
6. The following point that arises for my consideration;
 - 1) **Whether this petition filed under Order XX Rule 11 & 12 of CPC by the petitioners is deserves to be allowed?**
 - 2) **What order?**
7. My answer to the above point is
 - Point No.1: In the affirmative
 - Point No.2: As per final order for the following;

REASONS

8. **Point No.1:** On perusal of the case records reveals that, this court has passed a preliminary decree in O.S.No.36/2002 on 18-12-2003 awarding 1/9th share to mother of the petitioners in the suit properties. The respondents have appeared in this petition, but they have not filed objections to the petition. The respondents have not challenged the Judgment and Decree passed in OS NO. 36/2002 hence, the Judgment and Decree passed in OS No. 36/2002 is binding against them.

Further, in the present petition, Taluka Surveyor appointed as court commissioner to divide the shares as per the preliminary decree in the suit properties by allowing the IA No.II, which was filed by the petitioners. Therefore, the court commissioner dividing the shares has submitted the Wataphtakhte, PT sheet, notice along with

postal receipts and statement (Jawab Besmi), Panchayadasta. As per the order passed by this court, the court commissioner submitted the report and the commissioner had division the suit properties as per the preliminary decree. The petitioner counsel submitted that he has no objection to the commission report. Hence, the report of the court commissioner is accepted. Therefore, on the above said reasons, I answer the above point No.1 in the AFFIRMATIVE.

9. **Point No.2.** As I discussed above, I proceed to pass the following;

ORDER

The petition filed by the petitioners is hereby ALLOWED as under;

i) The landed property bearing R.S.No.2/1A total measuring 1 acres 16 guntas of land situated at Karadagi village, taluk Savanur.

(a) Out of it, the block No. I, the petitioners have got 6 guntas 3 annas of land situated at Karadagi village of Savanur Taluka.

(b) Out of it, the block No. II, the respondents have got 1 acres 9 guntas 13 Annas of land situated at Karadagi village of Savanur Taluka.

ii) The landed property bearing R.S.No.93/7 total measuring 3 acres 02 guntas of land situated at Karadagi village, taluk Savanur.

(a) Out of it, the block No. I, the petitioners have got 13 guntas 8 annas of land situated at Karadagi village of Savanur Taluka.

(b) Out of it, the block No. II, the respondents have got 2 acres 28 guntas 08 Annas of land situated at Karadagi village of Savanur Taluka.

iii) The landed property bearing R.S.No.112/3 total measuring 4 acres 26 guntas of land situated at Karadagi village, taluk Savanur.

(a) Out of it, the block No. II, the petitioners have got 20 guntas 10 annas of land situated at Karadagi village of Savanur Taluka.

(b) Out of it, the block No. I, the respondents have got 4 acres 5 guntas 6 Annas of land situated at Karadagi village of Savanur Taluka.

iv) The landed property bearing R.S.No.154/2A/1 total measuring 3 acres 12 guntas of land situated at Karadagi village, taluk Savanur.

(a) Out of it, the block No. II, the petitioners have got 14 guntas 10 annas of land situated at Karadagi village of Savanur Taluka.

(b) Out of it, the block No. I, the respondents have got 2 acres 37 guntas 06 Annas of land situated at Karadagi village of Savanur Taluka.

v) The landed property bearing R.S.No.154/2A/2 total measuring 5 acres 08 guntas of land situated at Karadagi village, taluk Savanur.

(a) Out of it, the block No. II, the petitioners have got 23 guntas 01 annas of land situated at Karadagi village of Savanur Taluka.

(b) Out of it, the block No. I, the respondents have got 4 acres 24 guntas 15 Annas of land situated at Karadagi village of Savanur Taluka.

vi) The landed property bearing R.S.No. 207/1A total measuring 3 acres 21 guntas of land situated at Karadagi village, taluk Savanur.

(a) Out of it, the block No. II, the petitioners have got 15 guntas 10 annas of land situated at Karadagi village of Savanur Taluka.

(b) Out of it, the block No. I, the respondents have got 3 acres 05 guntas 06 Annas of land situated at Karadagi village of Savanur Taluka.

(vii) No order as to costs.

viii) Draw the final decree accordingly.

(Dictated to the Stenographer, typed and transcribed by him the corrected, signed and then pronounced by me in the Open Court on this the 22nd day of October, 2018.)

(BALASAHEB WADAVADE)
Civil Judge, Savanur.

A N N E X U R E

WITNESSES EXAMINED ON BEHALF OF PETITIONERS:

- Nil -

DOCUMENTS MARKED ON BEHALF OF PETITIONERS:

- Nil -

WITNESSES EXAMINED ON BEHALF OF RESPONDENT:

- Nil -

DOCUMENTS MARKED ON BEHALF OF RESPONDENT:

- Nil -

(BALASAHEB WADAVADE)
Civil Judge, Savanur.