

Dated:11-02-2026

**ORDER ON MAINTAINABILITY OF THE  
PETITION**

Heard both the parties on maintainability of the petition.

2. The petitioners have filed the present final decree proceedings seeking drawing up of final decree in terms of the preliminary decree passed in O.S.No.36/2002 dated 18.12.2003, wherein the shares of the parties have already been determined.

3. After remand by the Hon'ble Appellate Court in FDP Appeal, respondent No.6 and 7 have filed objections mainly contending that (i) the petition is filed under wrong provisions of law, (ii) the proceedings have abated due to death of certain respondents, (iii) suit schedule properties are not properly described, (iv) some properties are alienated and necessary parties are not impleaded, and (v) appeal against preliminary decree is pending. The learned counsel for respondents No.6 and 7 argued that, on these grounds the petition deserves dismissal in limine.

4. Per contra, the learned counsel for petitioners submitted that all these contentions were already raised and considered by the Hon'ble Appellate Court, which has specifically remanded the matter for fresh disposal by permitting impleadment of legal representatives and for continuation of final decree proceedings. It is contended that dismissal of the petition at this stage would defeat the very purpose of remand.

5. On careful consideration of the objections, records and submissions, firstly, regarding the contention that the petition is filed under wrong provisions of law, it is well settled that mere quoting of a wrong provision does not render the proceedings void, if the Court otherwise has jurisdiction to grant the relief. Final decree proceedings are a continuation of the suit, and the Court is empowered to draw up a final decree to give effect to the preliminary decree.

6. Secondly, insofar as the plea of abatement due to death of respondent Nos.2, 4 and 8 is concerned, the Hon'ble Appellate Court

has already noticed this defect and specifically remanded the matter with a direction to permit the petitioners to implead the legal representatives of deceased respondents. Therefore, instead of dismissing the petition, the proper course is to permit the petitioners to take steps as directed by the Appellate Court.

7. Thirdly, the contention regarding improper description of properties and alienations pertains to matters to be examined during final decree proceedings, particularly at the stage of appointment of Court Commissioner and consideration of the Commissioner's report.

8. Fourthly, the pendency of R.A.No.1/2021 against the preliminary decree does not automatically bar continuation of final decree proceedings unless there is a stay of operation of the preliminary decree. No material is placed to show that the preliminary decree has been stayed by the appellate court.

9. It is to be noted that the preliminary decree passed in O.S.No.36/2002 has attained finality as on date, subject to outcome of any pending appeal, and this Court is duty bound to give effect to the same by drawing up the final decree.

10. The Hon'ble Appellate Court has remanded the matter specifically to enable proper adjudication by giving opportunity to both sides. Dismissing the FDP at this stage would be contrary to the remand order. Therefore I proceed to pass the following order;

### **ORDER**

The petition filed by the petitioners is held to be maintainable.

The petitioners are permitted to take steps for impleadment of legal representatives of the deceased respondents, as directed by the Hon'ble Appellate Court, within a reasonable time.

Call on

CJ & JMFC., SAVANUR