



**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.

**FDP.NO.5 / 2015**

**DATED THIS 18<sup>TH</sup> DAY OF JULY, 2025**

**Petitioners :** Smt. Shantavva W/o Chanaveeragouda  
Halegoudra - Since dead, by her Lrs and  
others

**[By Sri N.S.P., Advocate]**

**V/s.**

**Respondents:** Sri Mallareppa S/o Guddappa Koti - Since  
dead, by her Lrs and others

**[R1(a & b) and R2 and R3 by Sri. G.G.P., Advocate]  
[R4 to R6 by Sri. M.M.P., Advocate]**

**PARTIES TO I.A. No.XII**

**Applicant :** Smt. Basavannevva W/o Shivanagouda Patil

**V/s.**

**Opponents :** Sri Mallareppa S/o Guddappa Koti - Since  
dead, by her Lrs and others

I	Provision under which the applications are filed :	U/S 151 of the CPC
II	Relief sought for :	Modification of the preliminary decree passed in R.A. No. 128/2006 dated 14.09.2009
III	Date on which the application is filed :	30-08-2023



IV	Number of applications :	XII
V	The date of which objections filed by the different opponent :	12-10-2023
VI	Date on which the order was passed on said application:	18-07-2025

**(Srinivasa. S.N.)  
Civil Judge & JMFC.,  
Savanur.**

**ORDER ON I.A. NO.XII**

This application is filed by petitioners No.1 to 4 U/S 151 of the CPC seeking modification of the preliminary decree passed in R.A.No.128/2006 dated 14.09.2009 by the Hon'ble Appellate Court and prays to modify or alter the preliminary decree so as to allot 1/5th share each to the petitioners in the suit schedule properties, in view of the amendment to the Hindu Succession Act, 1956 and the change in circumstances, in the interest of justice and equity.

**2.** It is stated in the affidavit accompanying the application that the Hon'ble Appellate Court in R.A.No.128/2006, by judgment dated 14.09.2009, was pleased to allow the appeal filed by the petitioners against the dismissal of their suit O.S.No.75/2005 and granted them equal share in the half share which was allotted to



their father in the suit schedule properties. The remaining half share was allotted to Respondent No.1. It is further submitted that no appeal has been preferred against the said appellate decree and the same has attained finality.

**3.** The petitioners now contend that, by virtue of the Hindu Succession (Amendment) Act, 2005, daughters have been recognized as coparceners with equal rights as sons in ancestral and joint family properties. Therefore, in light of this amendment and in the changed circumstances, the petitioners No.1 to 4 are entitled to 1/5th share each in the entire suit schedule properties, considering that there are five coparceners (petitioners No.1 to 4 and respondent No.1) entitled to equal shares. Hence they pray to allow the application.

**4.** On the other hand the Respondent No.7 has filed objections stating that he has no objection to the modification of the preliminary decree. However, he has contended that Respondent No.2 (the son of Respondent No.1) had sold 17 guntas of land in Sy.No.88/3k/3 to Respondent No.7 from the share allotted to Respondent No.1. Accordingly, Respondent No.7 has prayed that the said extent of land be retained in the share of Respondent No.1 to protect the sale transaction made in his favour.



5. The points that would arise for the consideration of this court are as follows:-

**POINTS**

1. *Whether the applicants/ petitioners have made out sufficient grounds to allow the application?*
2. *What order?*

6. The findings of this court on aforesaid points are as follows:-

Point No.1: In the Affirmative

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

**:-REASONS:-**

7. **Point No. 1:-** This petition is filed by the petitioners for passing the final decree in respect of the Petition schedule properties as per Judgment and decree passed in R.A.No.128/2006. The petitioners have filed this application for modification of the preliminary decree passed in R.A.No.128/2006 dated 14.09.2009 by the Hon'ble Appellate Court and prays to modify or alter the preliminary decree so as to allot 1/5th share each to the petitioners in the petition schedule properties, in view of the amendment to the Hindu Succession Act, 1956 and the change in circumstances, in the interest of justice and equity.



**8.** On perusal of pleadings, document materials placed on records, and the contentions of both parties, the appellate court in R.A. No.128/2006 passed a preliminary decree as here under;

“The impugned judgment and decree of the trial Court passed in OS.No.75/05 dated 7-10-06 is hereby set aside.

It is hereby declared that the suit of the plaintiffs is hereby decreed. The suit schedule properties are liable to be divided into two equal shares by way of meets and bounds in between the plaintiffs’ father and the 1st defendant. It is hereby ordered that, one such equal share shall be allotted towards the share of the plaintiffs’ father Guddappa. The remaining half-equal share shall be allotted to the 1st defendant. The 1st defendant is also entitled to 1/5th share in the half share of his father.

It is hereby further declared that the plaintiffs are entitled to equal share in the half share allotted towards share of their father. Plaintiffs are entitled to get 4/10th share in the suit schedule properties by metes and bounds. It is hereby further ordered that defendants 2 and 3 shall be entitled to equal share i.e., 1/3rd share each in the half share allotted to the share of the 1st defendant.

Draw up preliminary decree accordingly.”

The said decree has not been challenged by any of the parties and it has attained finality.

**9.** It is noted that the Hindu Succession (Amendment) Act, 2005, which came into effect from 09.09.2005, confers upon the daughters equal rights in the coparcenary property as that of a



son. The Hon'ble Supreme Court in Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1, has clarified that the said amendment has retrospective effect that daughters have coparcenary rights by birth, regardless of whether the father was alive at the time of the amendment.

**10.** In the present case, the preliminary decree granted by limiting their entitlement to the half share of their father. In view of the decision by the Hon'ble Apex Court and the statutory amendment, the daughters, being coparceners, are entitled to equal shares in the joint family properties along with other coparceners.

**11.** The preliminary decree only determines shares and the court has to decide the allocation of shares in the final decree. Before passing of the final decree the court may pass any number of preliminary decree. It is also well settled that a preliminary decree can be modified before the final decree is passed, in light of subsequent events or change in law. The petitioners counsel relied on this decision of Hon'ble Apex Court of India passed in **Ganduri Koteswaramma Vs. Chakiri Yanadi, 2011 SAR (Civil) 957**. The Hon'ble Apex Court of India has held in page 794 para 14 of the above case, has held as under:

“A preliminary decree determines the rights and interests of the parties. The suit for partition is



not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree re-determining the rights and interests of the parties having regard to the changed situation.”

**12.** Hence, the petitioners No.1 to 4 are entitled to equal shares in the entire suit schedule properties as that of a son. Since there are five children (Petitioners No.1 to 4 and Respondent No.1), each shall be entitled to 1/5<sup>th</sup> share in the suit schedule properties.

**13.** Insofar as the contention of Respondent No.7 regarding the alienation of 17 guntas of land from Respondent No.1's share is concerned, the said aspect can be considered at the time of passing the final decree during the actual division and allotment of shares. Accordingly, this Court has answered ***point No.1 in the Affirmative.***



**14. POINT NO.2:-** For the foregoing reasons, I proceed to pass the following;

**ORDER**

The I.A.No.XII filed U/S 151 of CPC by the petitioners is hereby allowed.

The preliminary decree dated 14.09.2009 passed in R.A. No.128/2006 is hereby modified.

It is hereby declared that Petitioners No.1 to 4 and Respondent No.1 are entitled to 1/5<sup>th</sup> share each in the suit schedule properties.

Office to draw supplementary decree accordingly and annex the order and decree with the suit file.

No order as to costs.

*(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on this the 18<sup>th</sup> day of July 2025)*

(SRINIVASA.S.N)  
Civil Judge & JMFC.,  
Savanur.