

KAKB420006372016



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C. AT CHINCHOLI**

PRESENT

**Sri. Dattakumar Jawalkar, B.B.A. LL.B. (Hons.) LL.M.
C/c Addl Civil Judge and J.M.F.C.,
Chincholi**

Dated: 20th day of August 2025

F.D.P. No.3/2016

Petitioner

Umakant S/o Malleshappa, Age: 31
years, Occ: Agriculture, R/o Huvinahalli
village, Tq: Chincholi, Dist: Kalaburagi.

(By Sri. M.S.Sunkad Advocate)

V/s

Respondents

1. Fakirappa S/o Beerappa since
deceased deleted.
2. Malleshappa S/o Late: Fakirappa, Age:
55 years, Occ: Agriculture, R/o
Huvinahalli village, Tq: Chincholi, Dist:
Kalaburagi.
3. Beerappa S/o Late: Fakirappa, Age: 53
years, Occ: Agriculture, R/o Huvinahalli
village, Tq: Chincholi, Dist: Kalaburagi.



4. Gouramma W/o Late: Fakirappa, Age: 76 years, Occ: Agriculture & household, R/o Huvinahalli village, Tq: Chincholi, Dist: Kalaburagi.
5. Gangamma W/o Bhimsha since deceased deleted.
6. Nagamma W/o Ramesh, Age: 44 years, Occ: Agriculture, R/o Huvinahalli village, Tq: Chincholi, Dist: Kalaburagi.

(Respondent No.1,3 and 4 by Sri.B.Sudarshan Advocate, Respondent No.2 and 6 by Sri. S.A.Ponga)

ORDER

This Petition is filed by the Petitioner against the Respondents for drawing the final decree as per the preliminary decree in O.S.No.24/1996 dated 26-07-2007.

2. Brief history of the petition:

The Petitioner herein had filed the suit for partition and separate possession against the respondent No.1 to 5 with respect to suit properties in



O.S.No.24/1996. This Court vide judgment and decree dated 26-07-2005 had declared that the Plaintiff is entitled to 1/6th share in the suit properties. After a decade, the Petitioner herein filed the Petition for drawing of final decree on 28-04-2016. The Petitioner herein included 8 more properties and implead 2 more parties in the present Petition without the Order of the Court. Accordingly, this Court dismissed the said Petition of the Petitioner vide Order dated 15-02-2024. This Court gave a liberty to file fresh petition in conformity with the preliminary decree in O.S.No.24/1996. Accordingly, the Petitioner filed the fresh Petition in conformity with the preliminary decree in O.S.No.24/1996 on 27-05-2024.

3. Thereafter, the Respondent No.6 herein impleaded herself in the present petition and filed the objection to the main petition contending that she is also a member of joint family. The Plaintiff had filed the suit



in O.S.NO.24/1996 without impleading her and received judgment from the Court. Therefore, she prayed to allot her 1/4th share in the suit properties and also prayed to modify the decree.

4. The Petitioner herein filed the rejoinder to the objection filed by the Respondent No.6 stating that the Respondent No.6 had received non suited properties in land bearing Sy.No.34 measuring 4 acres 4 guntas and land bearing Sy.No.43 measuring 3 acres 20 guntas as her share during the partition. The Respondent No.6 failed to implead herself in O.S.No.24/1996 and till now in FDP.No.3/2016. The father of Respondent No.6 gave more amount to the Respondent No.6 to purchase the house at Hyderabad. The Respondent No.6 is not entitled to any share. Hence, prayed to dismiss the Counter claim of the Respondent No.6.
5. Based on the pleadings of the parties, this Court had framed the following:



ISSUES

1. Whether the Respondent No.6 proves that she is the member of joint family?
2. Whether the Respondent No.6 proves that there are grounds to re-allot the shares of parties?
3. Whether the Respondent No.6 proves that she is entitled to 1/4th share in the suit properties?
4. What Order or Decree?

6. Heard the learned counsel for Petitioner and Respondents.
7. Learned Counsel for Respondent No.6 relied upon the judgment of the Hon'ble Supreme Court in the case of *Revansiddappa V/s Mallikarjun* reported in 2023 INSC 783 and *S. Saireddy v/s S. Narayanreddy*.
8. The Respondent No.6 to prove her case has examined herself as RW-1 and got marked Ex.D-1



and 2 documents. The Counsel for Petitioner submitted that he does not have any evidence.

9. Based on the material on record, this Court answers the above issues as under;

Issue No.1: In Affirmative

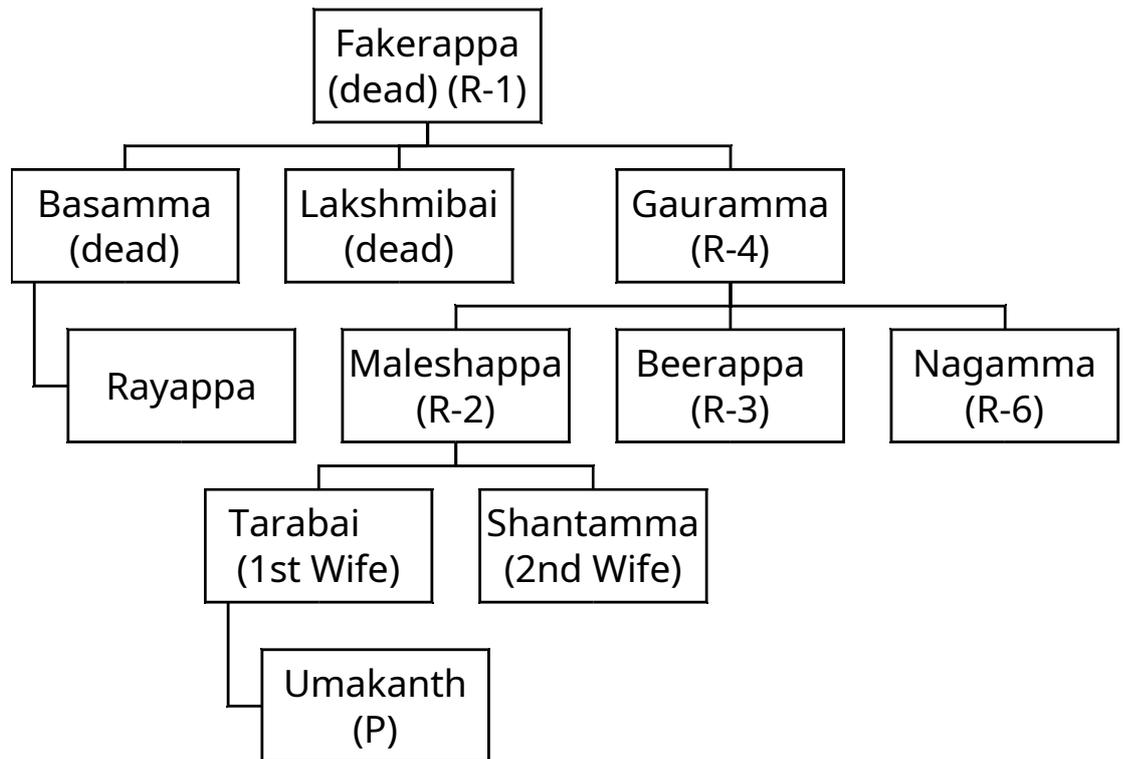
Issue No.2: In Affirmative

Issue No.3: In Affirmative

Issue No.4: As per the Final Order for the following:

REASONS

10. **Issue No.1:** At the stage of Final Decree Proceedings, the Respondent No.6 has impleaded herself and filed the objection stating that she is also the member of joint family member, therefore she is entitled to 1/6th share in the suit properties. The Petitioners have admitted the relationship of Respondent No.6. As per the undisputed facts between the parties, the family tree of the parties is as follows:



11. One Fakerappa is the propositus of the family. Fakerappa had three wives viz., Basamma, Lakshmibai and Gauramma (Respondent No.4). Rayappa is the son of Basamma. Lakshmibai died without any heirs. Gauramma have three children viz., Maleshappa (Respondent No.2), Beerappa (Respondent No.3) and Nagamma (Respondent No.4). Tarabai is the first wife of Respondent No.2 and Shantamma is the second wife of Respondent



No.2. The Petitioner Umakath is the son of Respondent No.2 through Tarabai.

12. The Petitioner herein had filed the suit against the Respondent No.1 to 5 for partition and separate possession in O.S. No. 24/1996. It is pertinent to mention here that the Petitioner did not implead Respondent No.6 in the said suit. This Court decreed the suit of the Petitioner and declared that the Petitioner is entitled to 1/6th share in the suit properties and passed the preliminary decree accordingly on 26.07.2005. At the stage of Final Decree Proceedings, the Respondent No.6 impleaded herself and filed the objection that she is also entitled to a share in the suit properties. She also paid Court fees on her claim.

13. The Petitioner in his Plaint in O.S. No.24/1996 has pleaded that the suit properties and non-suited properties are the joint family and ancestral properties. Before the birth of the Petitioner, there was a partition and the suit properties were allotted



to the share of Respondent No.2 and 3. There is no whisper about the existence of Respondent No.6 either in the Plaint or Written Statement. This Court in O.S. No.24/1996 had opined that the Suit Properties are the joint family properties of the Respondent No.1 to 4 herein and allotted 1/6th share to the Petitioner herein as the suit properties were ancestral properties. Now at the stage of Final Decree Proceedings the Respondent No.6 impeaded herself and filed the Counterclaim that she is also entitled to a share in the Suit Properties. The Petitioner herein filed the rejoinder to the Counterclaim admitting the relationship. He further submitted that two lands in Sy. No. 43/1 measuring 3 acres 32 guntas and Sy. No.34/4 measuring 4 acres 4 guntas were given to the Respondent No.6 at the time of family settlement. The deceased Respondent No.1 had given more amount to the Respondent No.6 from which she had purchased the house at Hyderabad.



14. The Respondent No.6 examined herself as RW-1 and reiterated the contents of her counterclaim in her affidavit of examination-in-chief. She got marked SSLC Certificate and Transfer Certificate as Ex.D-1 and 2. She deposed in her cross-examination that she does not know the Survey number of the property owned by her father. She denied allotting of land in Sy. No.34/4 and 43 to her in the family partition. She further deposed that Sy.No.43 was purchased by her. She deposed that Sy. No.34/4 was mutated in her name as she took care of her grandmother. The Petitioner did not lead his evidence to show that the said two properties were allotted to the share of Respondent No.6.
15. This Court in O.S. No.24/1996 had come to conclusion that the Suit Properties were the joint family properties of the Respondent No.1 to 4 and in the said suit none of the parties had whispered about the existence of Respondent No.6 and the relationship is not in dispute, therefore this Court is of the opinion



that the suit properties are the joint family properties of the Respondent No.1 to 4 and 6. Though the Petitioner took the defence that two properties were already allotted to the share of Respondent No.6, he had not pleaded about the same in his Plaint in O.S. No.24/1996 and also he did not lead his evidence in the present proceedings to show that two properties were allotted to the share of Respondent No.6. Hence, Issue No.1 is answered in affirmative.

16. Issue No.2: The Hon'ble Supreme Court in *Phoolchand v. Gopal Lal* reported in AIR 1967 SC 1470, while dealing with a similar issue as regards impleadment of third party at the stage of final decree proceedings observing that there is no prohibition for passing more than one preliminary decree for declaring the correct shares to which parties are entitled, held thus:

"7. We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more



than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. We have already said that it is not disputed that in partition suits the court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of parties of the suit on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights; if so, there is no reason as why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court. So far therefore as partition suits



are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so, and if there is a dispute in that behalf, the order of the court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal. We should however like to point out that what we are saying must be confined to partition suits, for we are not concerned in the present appeal with other kinds of suits in which also preliminary and final decrees are passed. There is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility. In any case if two views are possible -- and obviously this is so because the High



Courts have differed on the question - we would prefer the view taken by the High Courts which held that a second preliminary decree can be passed particularly in partition suits where parties have died after the preliminary decree and shares have to be adjusted. We see no reason why in such a case if there is dispute, it should not be decided by the Court which passed the preliminary decree, for it must not be forgotten that the suit is not over till the final decree is passed and the Court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties....."

17. Applying the above principle to the present suit, there is no bar to pass second preliminary decree as it has been established at the stage of Final Decree Proceedings that the Respondent No.6 is also entitled to the share. Therefore, this Court answers Issue No.2 in affirmative.



18. Issue No.3: As discussed in Issue No.1, this Court came to conclusion that the Suit Property is the joint family property of the Respondent No. 2 to 4 and 6. The Respondent No. 2, 3 and 6 being children of deceased Respondent No.1 and Respondent No.4 being the wife of deceased Respondent No.1 are entitled to equal share i.e., $1/4^{\text{th}}$ share each in the Suit Properties. In the $1/4^{\text{th}}$ share of Respondent No.2, the coparcener being Petitioner is entitled to $1/2$ share. Therefore, the share of the parties are as follows:

Petitioner: $1/4 \times 1/2 = 1/8$

Respondent No.2: $1/4 \times 1/2 = 1/8$

Respondent No.3: $1/4$

Respondent No.4: $1/4$

Respondent No.6 $1/4$

19. With the above observation, this Court answers Issue No.3 in affirmative.



20. Issue No.4: For the aforesaid reasons on Issue No.1 to 3, this Court proceeds to pass the following:

ORDER

The Counterclaim filed by the Respondent No.6 is hereby allowed.

The Petitioner and Respondent No.2 are entitled to 1/8th share each in the Suit Properties and the Respondent No. 3, 4 and 6 are entitled to 1/4th share each in the Suit Properties.

Draw another preliminary decree accordingly.

(Dictated to the Stenographer Grade-III directly on the Computer, then corrected and pronounced by me in the Open Court on this the 20th day of August 2025)

*(Dattakumar Jawalkar)
C/c Addl. Civil Judge & J.M.F.C
Chincholi.*