

IN THE COURT OF CIVIL JUDGE AND J.M.F.C, JEWARGI.

Present: **Sri. SHIVARAJ.V. SIDDESHWAR.**

B.Sc., B.Ed. LL.B.(spl).

Civil Judge and JMFC, Jewargi.

DATED ON THE 9th DAY OF APRIL-2018.

F.D.P. No.8/2013

- 1) Nagamma W/o Kareppa Benkotagi,
(D/o late Sidramappa Biradar)
Age: 47 Years, Occ: Agriculture,
R/o Halagattarga, Tq: Jewargi,
Dist: Kalaburagi.

Plaintiff/Petitioner

V/S.

- 1) Chandawwa W/o late Sidrammappa
Biradar,
Age: 70 Years, Occ: Agriculture,
R/o Halagattarga, Tq: Jewargi,
Dist: Kalaburagi.
- 2) Bhagamma W/o late Bhimaraya Biradar,
Age: 40 Years, Occ: Agriculture,
R/o Murganur, Tq: Jewargi,
Dist: Kalaburagi.
- 3) Basalingamma W/o Sharanagouda
Kalagi, (D/o late Bhimaraya S/o
Sidramappa Biradar)
Age: 20 Years, Occ: Agriculture,
R/o Murganur, Tq: Jewargi,
Dist: Kalaburagi.
- 4) Sharanagouda S/o Chandramappa
Kalagi,
Age: 27 years, Occ: Agriculture,
R/o Murganur, Tq: Jewargi,
Dist: Kalaburagi.

Defendants/Respondents

Sri.J.V.H, Adv for Petitioner.

Sri.B.B, Adv for Respondent No.1 to 4.

ORDER

This petition is filed by the petitioner U/sec. 54 of C.P.C for drawing final decree to allot her 4/9th share in terms of preliminary decree passed in O.S.No.138/2012 on the file of this court.

2. After filing this petition the notice is issued to the respondents, respondents appeared through their counsel. But they did not file their objection to the petition filed by the petitioner. The petitioner filed I.A.No.1 to appoint the court commissioner to demarcate the suit properties as per judgment and decree in O.S.No.138/2012. On 07-12-2013 this court has passed an order I.A.No.1 thereby appointed the Court Commissioner to demarcate the 4/9th share of petitioner. On 19-03-2016 court commissioner has filed his report by demarcating the 4/9th share of petitioner. Respondents did not file their objection to commissioner report. During pendency of the FDP respondent No.2 had filed I.A.No.8 under order 20 Rule 18 R/w 151 of CPC to readjust the share of petitioner. This court has rejected the I.A.No.8 filed by the respondent No.2.

3. Heard arguments from both side with reference to the commissioner report.

4. The following Points arose for determination.

- 1) Whether commissioner report deserves to be accepted?
- 2) What order?

5. My Answer to the above points is as under -

POINT No.1 : In the Affirmative.

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

REASONS

6. **POINT No.1:** It is specific case of the petitioner that, the suit filed by the petitioner in O.S.No.138/2012 on the file of this court for the relief of partition and separate possession was decreed and this court pleased to declare that plaintiff/petitioner is entitle to partition and separate possession of 4/9th share in the suit properties. Learned counsel for the respondents argued that, petitioner is not entitled to equal share as that of her brothers and petitioner is only entitled to notional partition in the suit properties. A perusal of commissioner report with map it would go to show that, commissioner has demarcated the 4/9th share of petitioner. There is no record to show that appeal is pending against the judgment and decree in O.S.No.138/2012. At this stage it is appropriate refer a decision of Hon'ble Apex Court in Civil Appeal No.188-189 of 2018 between DANAMMA @ SUMAN SURPUR AND ANOTHER V/S AMAR AND OTHERS, Where in Hon'ble Apex Court held that;

“Section 6, as amended, stipulates that **on and from** the commencement of the amended Act, 2005, the daughter of a coparcener shall **by birth** became a coparcener in her own right in **the same manner as the son**. It is apparent that the status conferred upon sons under the old section and the old Hindu Law was to treat them as coparceners **since birth**. The amended provision now statutorily recognizes the rights of coparceners of daughters as well **since birth**. The section uses the words in the same manner as the son. It should therefore be apparent that both the sons and the daughters of a coparcener

have been conferred the right of becoming coparceners **by birth**. It is the very **factum of birth** in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by **virtue of birth**. Devolution of coparcenary property is the later stage of and a consequence of death of a coparcener. The first stage of a coparcenary is obviously its creation as explained above, and as is well recognized. One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. Hence, the rights of coparceners emanate and flow from birth (now including daughters) as is evident from sub-s (1)(a) and (b).” (Para 24)

In the light of principles laid down in the above said decision it is crystal clear that sons and daughters of coparcener became coparceners by virtue of birth. Hence, I am of the clear opinion that, contention taken up by the respondents holds no water. As such, I am of the opinion that there is no impediment to accept the commissioner report. Looking to the propinquity of the relationship between the parties they are to be directed to bear their own costs. Hence, I answered the above point No.1 in the Affirmative.

7. **POINT No.2:** In view of my finding on point no.1, petition filed U/Sec. 54 of C.P.C deserves to be allowed by allotting the portion marked in the sketch map appended to the court commissioner report which is filed on 19-03-2016. Hence I proceed to pass the following-

ORDER

The petition filed by the petitioner
U/Sec. 54 of C.P.C is allowed.

The portion marked in the sketch
map appended to the commissioner report
is hereby allotted to the petitioner and
respondents.

Draw final decree accordingly.

No order as to costs.

(Typed to my dictation directly on laptop by the
Stenographer, same is corrected by me and then pronounced
in the open court on 09th day of April-2018)

(SHIVARAJ V SIDDESHWAR)
Civil Judge & JMFC, Jewargi.