

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., JEWARGI
AT JEWARGI.**

**Present:- Sri.D.Ramesh, BA.L., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 20th day of November, 2021

F.D.P.No.8/2013

Between:

Nagamma : **Petitioner**

(By Sri.J.V.H., Adv.,)

And

Chandawwa and Others : **Respondents**

**(Respondent No.2 to 4
By Sri.B.B., Adv.,)
(Respondent No.1 dead)**

I.A.No.11

Sharanagouda : **Applicant/ Respondent No.4**

V/s.

Nagamma : **Opponent/Petitioner**

ORDERS ON IA No.11

The respondent No.4 has filed the application U/o 20 rule 18 R/w 151 of CPC and prayed to allot 1/9th share of deceased respondent No.1 in favour of respondent No.4.

2. The brief averments of the affidavits are as follows:-

That the petitioner filed suit for partition and separate possession in respect of suit schedule property in O.S.No.138/2012 on the file of this Hon'ble court stating that respondent No.1 was her mother and respondent No.2 and 3 are the wife and daughter of her brother late Bhimaraya. Suit was decreed on 19.11.2012 declaring that petitioner is entitled for 4/9th share in suit schedule property, and sale deed executed by respondent No.1 in favour of respondent No.4 with respect of land Sy.No.47/1 measuring 6 Acres 33 Guntas of village Halagatharaga dated 07.03.2012 is null and void and not binding on the share of plaintiff only. However, respondent No.1 was also entitled for 1/9th share in both suit lands. The present FDP is filed for drawing final decree as per the preliminary decree passed in the said suit. The said FDP was allowed on 09.04.2018 against the said final decree, Regular Appeal was filed in R.A.No.15/2018 before the Hon'ble Senior Civil Judge Jewargi. The said appeal was allowed and remanded the matter for fresh consideration giving an opportunity to file objection to commissioner report and also to advance the argument after conclusion of necessary modification of shares as per law. That the present petitioner is the bonafide purchaser of suit land Sy.No.47/1 measuring 6 Acres 33 Guntas through registered sale deed document No.5700/2011-12, dated 07.03.2012. As per the preliminary decree, the said sale deed was declared as null and void and not binding only on the 4/9th share of petitioner, but is binding on the 1/9th share of respondent No.1. The said sale deed has not been entirely canceled or declared as null and void. Since he being the purchaser of one of the sharer, he step into the shoe of

his vendor. Hence, he is entitled to get the share of his vendor. He has been in peaceful possession and enjoyment of said purchased land. 1/9th share of his vendor may kindly be allotted to him in land Sy.No.47/1 measuring 6 Acres 33 Guntas of village Halagattara. Hence prays to allow the application.

3. On the other hand learned counsel for the petitioner filed objection to the application contending that the respondent No.4 is husband of the respondent No.3. The respondent No.1 to 4 to dupe the legitimate share of petitioner have falsely created a nominal sale deed in the name of respondent No.4 in respect of the suit property at item number 'B' through registered sale deed document No.5700/2011-12 dated 07-03-2012 said to have been executed by respondent No.1. The respondent No.4 has not any consideration amount to the respondent No.1. The same has been challenged by the petitioner in O.S. No.138/2012 and the said sale deed has been declared as null and void and not binding on the share of the petitioner. Now the respondents to drag on the matter causing hurriedly in passing final decree has filed false application. The respondent No.2 to 4 are residing together and enjoying together. Since the respondent No.4 is not a bonfide purchaser of suit property at item number 'D' is not entitle for any share much less of 1/9th. Hence the petition filed by the respondent may be rejected.

4. Heard the arguments. Perused the records.

5. The Points that arise for my consideration are as follows:-

Point No.1:- Whether the applicant/respondent No.4

**proves that the application filed by him
deserves to be allowed?**

Point No.2 :- What order?

6. I answer the above points as follows:-

Point No.1 :- In the Negative.

Point No.2 :- As per the final orders for the following,

REASONS

7. Point No.1 :- The respondent No.4 has filed the application contending that the petitioner filed suit for partition and separate possession in respect of suit schedule property in O.S.No.138/2012 on the file of this Hon'ble court stating that respondent No.1 was her mother and respondent No.2 and 3 are the wife and daughter of her brother late Bhimaraya. Suit was decreed on 19.11.2012 declaring that petitioner is entitled for 4/9th share in suit schedule property, and sale deed executed by respondent No.1 in favour of respondent No.4 with respect of land Sy.No.47/1 measuring 6 Acres 33 Guntas of village Halagatharaga dated 07.03.2012 is null and void and not binding on the share of plaintiff only. However, respondent No.1 was also entitled for 1/9th share in both suit lands. The present FDP is filed for drawing final decree as per the preliminary decree passed in the said suit. The said FDP was allowed on 09.04.2018 against the said final decree, Regular Appeal was filed in R.A.No.15/2018 before the Hon'ble Senior Civil Judge Jewargi. The said appeal was allowed and remanded the matter for fresh consideration giving an opportunity to file objection to commissioner report and also to advance the argument after conclusion of necessary modification of shares as per law. That the present petitioner is the bonafide purchaser of suit land

Sy.No.47/1 measuring 6 Acres 33 Guntas through registered sale deed document No.5700/2011-12, dated 07.03.2012. As per the preliminary decree, the said sale deed was declared as null and void and not binding only on the 4/9th share of petitioner, but is binding on the 1/9th share of respondent No.1. The said sale deed has not been entirely canceled or declared as null and void. Since he being the purchaser of one of the sharer, he step into the shoe of his vendor. Hence, he is entitled to get the share of his vendor. He has been in peaceful possession and enjoyment of said purchased land. 1/9th share of his vendor may kindly be allotted to him in land Sy.No.47/1 measuring 6 Acres 33 Guntas of village Halagattara.

8. On the other hand the petitioner has filed the objection to the application contending that the respondent No.4 is husband of the respondent No.3. The respondent No.1 to 4 to dupe the legitimate share of petitioner have falsely created a nominal sale deed in the name of respondent No.4 in respect of the suit property at item number 'B' through registered sale deed document No.5700/2011-12 dated 07-03-2012 said to have been executed by respondent No.1. The respondent No.4 has not any consideration amount to the respondent No.1. The same has been challenged by the petitioner in O.S. No.138/2012 and the said sale deed has been declared as null and void and not binding on the share of the petitioner. Now the respondents to drag on the matter causing hurriedly in passing final decree has filed false application. The respondent No.2 to 4 are residing together and enjoying together. Since the respondent No.4 is not a bonfide purchaser of suit

property at item number 'D' is not entitle for any share much less of 1/9th.

9. I have carefully gone through the judgment and decree in O.S.No.138/2012. Wherein it was declared that the plaintiff (petitioner herein) was entitled 4/9th share in the suit schedule properties. Further it has been declared that the registered sale deed dated 07-03-2012 in respect of suit property bearing Sy.No.47/1 to the extent of the share of the plaintiff is null and void and same is not binding on the plaintiff. Based on the said judgment and decree the present petition has been filed by the petitioner. Accordingly the final decree also drawn as per the order dated 09-04-2018. Aggrieved by the said final decree the respondents herein and late Chandrawwa respondent No.1 have filed an Appeal before the Hon'ble Senior Civil Judge, Jewargi, contending that no opportunity had been given to file objections to the commissioner report, and not given opportunity to them to advance the arguments on commissioner report. Accordingly, the said appeal has been allowed and remanded the matter to this court for fresh disposal with a direction to give opportunity to both parties while considering the commissioner report. In para 17 of judgment of said Regular Appeal Hon'ble Appellate court observed to modify the preliminary decree passed by this court due to death of respondent No.1.

10. After remanding the matter the case is taken on board and modify the preliminary decree as per the observation made in the Regular Appeal No.15/2018. Then learned counsel for the petitioner filed application for appointment of commissioner. The counsel for respondents submitted no objection for appointment of

commissioner. Accordingly commissioner has been appointed for demarcation of shares as per the modified preliminary decree. Thereafter, the commissioner has filed his report by demarcating the shares as per the modified preliminary decree. Thereafter counsel for respondent filed objection to the commissioner report. Hence commissioner has been called to give evidence. Then he has also examined and cross-examined. Thereafter the respondent No.4 filed the present application and prayed to allot 1/9th share of deceased respondent No.1 in favour of respondent No.4. In fact the Hon'ble Appellate court has observed in its judgment that the respondent No.1 was dead, hence shares of parties would increased. Accordingly, shares also allotted to the present petitioner and respondents. But though the respondent No.4 herein was the appellant No.4 in the Regular Appeal No.15/2018 he had not sought the share before the Hon'ble Appellate court while allotting shares to the parties. Even after remanding the matter also while appointing the court commissioner, he did not file the present application. But now at the fag end of the case he has filed the present application. It clearly goes to show that nothing but dragging the matter as contended by the learned counsel for petitioner in the objections. Apart from this, as discussed above, the Hon'ble Appellate court has allotted the shares to the parties. Hence this court being the lower court to the Hon'ble Appellate court cannot change shares which allotted by appellate court. This court can change the shares only on the death of a person or on change of any law. Except these two circumstance, in a final decree proceedings lower court cannot interfere with the orders of judgment of it appellate court. Therefore the present application

filed by the respondent No.4 before this court is not maintainable.
Hence, I answer the Point No.1 in the Negative.

11. Point No.2 :- In view of the above discussion, I proceed to the pass the following :-

ORDER

**I.A.No.11 U/o 20 rule 18 R/w 151
of CPC filed by the respondent No.4 is
hereby dismissed.**

**In the facts and circumstance of
the case no order as to costs.**

(Dictated to the stenographer, transcribed by him. The transcript revised by me, and then pronounced in the open court on this the 20th day of November, 2021.)

**(D.RAMESH)
Civil Judge & JMFC.,
Jewargi.**