

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C. AT  
SEDAM.**

**F.D.P. No.1 OF 2018**

:Present:

**Sri.Sagar Gurugouda Patil.**

B.A, LL.B(Spl).

Senior Civil Judge & JMFC, Sedam.

**Dated this the 4<sup>th</sup> day of March - 2024**

**PETITIONERS:**

Smt.Lachamma & another

(Petitioners by Sri.N.R. Advocate)

/// Versus ///

**RESPONDENTS:**

Sayanna and Others

(R.1(a to c) & R.2 Absent)

(R.3& 4by K.B.R. Advocate)

**Order on IA U/s.151 of CPC**

Lachamma & another                      Applicants/Petitioners  
V/s

Sayanna & others                      Opponents/Respts

**O R D E R O N I.A. NO.6 U/s.151 of CPC**

The petitioners have filed this application U/s.151 of CPC and sought to pass modified preliminary decree allotting 1/3<sup>rd</sup> share each to petitioners 1 and 2.

2. The petitioner No.1 has sworn to an affidavit in support of IA and stated that this court pleased to allot 1/9<sup>th</sup> share each to petitioners 1 and 2 holding that father of petitioner

No.1 was not alive. The said allotment was made relying on the judgment of the Hon'ble Supreme Court in the case of Prakash V/s Phulavathi. But now the said proposition of law is changed. Hence prays to allow the IA.

3. The respondents have not filed objections to IA.
4. Heard arguments. Perused the records.
5. The following points that arises for my determination

is:

1. Whether the Petitioners have made out a grounds for modification of the preliminary decree as sought in the IA?
2. What order?
6. My findings on the above points are as under:

Point No.1: In the Affirmative.

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

### **REASONS**

7. **Point No.1:** On perusal of the judgment dated 28.3.2017 of this court it becomes clear that my predecessor in office has given a finding that the father of the plaintiff died on 9.9.2005. Therefore, plaintiff No.1 is not coparcener and hence she is not entitled for equal share. Accordingly allotted 1/9th share to plaintiff No.1 and 4/9<sup>th</sup> share to plaintiff No.2 by effecting notional partition. On perusal of the judgment it becomes clear that father of the plaintiff No.1 had two sons i.e., defendant No.1

and father of plaintiff No.2. The learned counsel for the petitioners has argued that in view of the recent position of law the petitioner No.1 being daughter is also coparcener and she is also entitled for equal share along with plaintiff No.2 and defendant No.1. In support of his argument he relied on the decision of the Hon'ble Supreme Court in the case of Vineeta Sharma V/s Rakesh Sharma and others reported in (2020) 9 SCC 1, wherein the Hon'ble Supreme Court held that *"daughter born before date of enforcement of the 2005 Amendment as same right as daughter born on or after the amendment and there is no requirement of coparcener father to be alive on the date of coming into force of the said amendment"*.

**8.** In view of the above principle of law it is clear that the petitioners 1 and 2 and respondent No.1 being coparceners are entitled for equal share. But earlier while passing preliminary decree this court allotted 1/9<sup>th</sup> share to petitioner No.1 by effecting notation partition. Therefore, now the same has to be rectified by allotting 1/3<sup>rd</sup> each to petitioners and respondent No.1. Hence, I answer point No.1 in the Affirmative.

**9. Point No.2:-** As I have answered Point No.1 in the Affirmative. I proceed to pass the following

**ORDER**

IA filed by the petitioners U/s.151 of CPC is hereby allowed.

The preliminary decree dated 28.3.2017 in O.S. No.42/2014 is hereby modified.

In view of the above order the shares of the parties are modified as under:

The plaintiffs 1 and 2 and defendant No.1 are entitled for equal share i.e., 1/3<sup>rd</sup> share each in the suit schedule properties.

Office is directed to draw modified Preliminary Decree accordingly.

(Dictated to the Stenographer directly on computer, corrected and signed by me and then pronounced in the open court on this the **4<sup>th</sup> day of March- 2024**)

**(Sagar Gurugouda Patil)**  
Senior Civil Judge & JM.F.C,  
Sedam.