

IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C
SEDAM

PRESENT: SRI. VIJAYKUMAR S. JATLA

B.Sc., LL.B.

Senior Civil Judge & JMFC., Sedam

DATED THIS THE 12TH DAY OF SEPTEMBER-2022.

FDP.No.11/2019

Petitioner : Mallamma.

Versus

Respondents : Ramlingappa & Others.

Order on I.A.No-I U/Sec. 151 of CPC filed by Petitioner

This is an interlocutory application filed by the petitioner seeking to modify the preliminary decree allotting petitioner/plaintiff 1/3rd share.

2. Advocate for petitioner contended that, the petitioner had filed suit O.S.No.45/2018 for partition and separate possession regarding the suit properties mentioned therein. The Hon'ble court was pleased to decree the suit of the respondent allotting petitioner 1/4th share

and also her father defendant No.1, 1/4th share. Now the petitioner's father died. Therefore, after the death, the share of deceased is to be allotted to the plaintiff and defendant No.2 and 3 equally. Therefore, the Hon'ble court be pleased to pass modified preliminary decree allotting 1/3rd share to the petitioner/plaintiff and respondent NO.2 and 3/defendant No.2 and 3. Further filed memo dated 26.9.2021 contended that the respondent No.1 passed away after decree is passed. Respondent No.1 is allotted 1/4th share. The 1/4th share of Ramlingappa is to be allotted to petitioner, respondent No.2 to 4. Therefore, 1/4th when divided among four members every one will be entitled for 1/16th share in the 1/4th share of respondent No.1. Therefore, the share of plaintiff is 5/16th, respondent No.2 is 1/16th, respondent No.3 is 5/16th and respondent No.4 is also 5/16th share. Hence, sought for allowing IA.1.

- 3.** The respondents not filed objections.
- 4.** On the basis of the above pleadings and on hearing petitioner side, the following points arise for my consideration.

- 1) Whether the petitioner has made out grounds to allow I.A.No.1 U/Sec. 151 of CPC ?
- 2) What order?

5. 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

6. **Point No.1:-** The case of the petitioner is as discussed above.

That petitioner filed suit for partition and separate possession in O.S No.45/2018, same was decreed and 1/4th share was allotted to petitioner and the deceased respondent No.1,respondent no.3and 4 allotted 1/4th share each. As the deceased respondent No.1 died who is the husband of respondent No.2 and father of petitioner, respondent No.3 to 4 and the share of deceased respondent No.1 is to be allotted to petitioner and respondent No.2 to 4 respectively. Under these circumstances, the petitioner/plaintiff, respondent No.3/defendant No.3 and respondent No.4/defendant No.4 are entitled for 5/16th share each and the respondent No.2/defendant

No.2 is entitled for 1/16th in the suit schedule properties. In the light of the above reasons, the preliminary decree is to be modified. The petitioner/plaintiff made out the valid and justifiable grounds to allow IA No.1 U/s.151 of CPC. Hence, I hold **point No.1 in the Affirmative.**

7. **Point No.2**:- As I have held point No. 1 in the Affirmative for the foregoing reasons, I proceed to pass the following:

ORDER

IA-I Under Section 151 of CPC filed by the petitioner is allowed.

The preliminary dated 27.9.2019 is hereby modified. The petitioner/plaintiff, respondent No.3/defendant No.3 and respondent No.4/defendant No.4 are entitled for 5/16th share each in the suit properties with separate possession by metes and bounds. Further respondent No.2/defendant No.2 is

entitled for 1/16th share in the suit schedule properties.

Office is directed to draw preliminary decree

as per modification order.

(Dictated to the stenographer directly on computer and corrected, signed and then pronounced by me, in the open Court on this the **12th day of September-2022**, at Sedam)

(Vijaykumar.S.Jatla)
Senior Civil Judge & JMFC,
Sedam.