

27.6.2024.

Orders Rights of respondents 6 and 7

The respondents 6 and 7 have filed separate applications U/O 1 Rule 10(2) of CPC and sought to implead them as parties to this proceedings.

These respondents 6 and 7 were not made as parties to the suit in O.S.No.2/2007. Therefore in this proceeding they moved applications U/O 1 Rule 10(2) of CPC. This court by its order dated 16.4.2019 impleaded proposed respondent No.6 as respondent No.6 and impleaded proposed respondent NO.7 as respondent No.7 by its order dated 13.3.2023. thereafter the respondents 6 and 7 have entered into witness box to establish their rights.

The respondent No.6 has examined herself as RW.1 and respondent No.7 has examined herself as

RW.2. They both have filed evidence on affidavits in lieu of their examination in chief and deposed that the petitioners herein filed suit for partition and same was decreed. These applicants are the daughters of deceased Narasappa S/o Lachamappa. They are also co-sharers and they are having share in the suit properties and sought to allot their shares to them. In spite of sufficient opportunities the petitioners have failed to cross-examine RW.1 and 2. Therefore, their evidence has remained unchallenged. Hence, there is no reason to disbelieve the evidence of RW.1 and 2.

Apart from this in spite of sufficient opportunities the petitioners have failed to enter into witness box to lead rebuttal evidence. Therefore, the evidence of RW.1 and 2 has remained unchallenged.

Perused the records. Heard arguments.

The judgment and decree in O.S.No.2/2007 show that the petitioners herein had filed suit for partition and separate possession against respondents 1 to 5 herein. In page No.2 of the judgment plaint averments are narrated, wherein it is found that grand father of plaintiffs 1 to 4-Sanna Narsappa died leaving behind him two sons and two daughters viz Pentappa, Shamappa, Tippamma and Shamamma. Daughters are married and they took gold and movable at the time of their marriages towards their shares. The above pleadings of the plaintiffs/petitioners herein makes it clear that Tippamma and Shamamma i.e., respondents 6 and 7

are daughters of Sanna Narasappa. Therefore, by virtue of amended Section 6 of Hindu Succession Act the respondents 6 and 7 are also coparceners along with their brothers Pentappa and Shamappa. Accordingly they are also having equal shares along with their brothers in the suit schedule properties. But the petitioners herein did not make them as parties in O.S.No.2/2007. Therefore, it is just and necessary to pass another one preliminary decree allotting share to respondents 6 and 7 also along with petitioners and respondents. Hence, the following:

ORDER

The petitioners together, respondent No.1 and respondents 6 and 7 each are entitled for 1/4th share in the suit properties.

Office to draw preliminary decree accordingly.

The respondents 6 and 7 are hereby directed to pay requisite court fees of their shares.

For hearing call on 6.7.2024.

**Senior Civil Judge & JMFC,
Sedam.**