

**ORDERS ON I.A. U/O.20 RULE 18 R/W SEC.54 OF CPC**

The present application has been filed by the petitioner seeking an order in respect of alterations/modifications to be caused in the shares of the plaintiff and the defendants No.1, 2, 4 to 6 in the present petition.

2. The application is supported with the affidavit of the petitioner. In her affidavit, she has stated that now the petition has been filed by them for seeking the final decree in terms of the preliminary decree passed by this Court. This Court has granted the decree for partition by allotting 4/49<sup>th</sup> share in all the suit schedule properties. While decreeing the suit, this Court has treated this petitioner's deceased husband, her brothers and sisters as co-parceners and allotted the shares at par each other. Infact, her father in law i.e., the father of the husband of this petitioner died about 16 years back. In view of the decision rendered by the Hon'ble Apex Court, the female heirs cannot be treated as co-parceners. In view of this, her sister in laws are entitled for notional share out of their father's share. As such, the share has to be modified as sought for in the accompanying application. It is submitted that if this Court has not modified the decree as sought for in the accompanying application, it will cause the great injustice, inconvenience to the petitioner and irreparable loss would be caused to her. Hence, it is prayed to allow the application.

3. After filing this application, none of the respondents have opted to file objections to the said application. Further,

the learned counsel for the respondents has submitted his no objections to the said application. In view of this, this Court has posted the case for enquiry. During the enquiry, the petitioner herself examined as the PW.1. Further, she has not opted to produce any documents. No cross-examination of the PW.1 was held and no respondents side evidence was led. In view of this, the case was posted for arguments.

4. Heard the arguments .

5. The following points would arise for my consideration:-

1) Whether the petitioner has made out grounds to allow the application and thereby to modify or rectify the shares of the petitioner as well as the respondents as claimed in the application?

2) What order?

6. My findings to the above said points are as follows:-

Point No.1 :- In the **affirmative**.

Point No.2 :- As per final order,

for the following :-

### **REASONS**

7. **Point No.1**:- The present petition has been filed by the petitioner on the basis of the preliminary decree passed in O.S.74/2004 on the file of this Court. In the said suit, this

Court has passed the decree by declaring that the present plaintiff i.e., the petitioner is entitled for  $4/49^{\text{th}}$  share in all the suit schedule properties by metes and bounds. Further, no appeal has been preferred by the present respondents. Hence, the decree passed by this Court has attained its finality. By looking in to the genealogy produced by the plaintiff, it is very clear that the deceased Marigowda @ Dodda Thammaiah had got three sons and three daughters. Further, it is the contention of the present petitioner that the propositous Marigowda @ Dodda Thammaiah has died about 16 years back. The said contention of the petitioner is not disputed by the respondents. In view of the said facts, the propositous Marigowda @ Dodda Thammaiah has died much prior to the commencement of the Hindu Succession (Amendment) Act, 2005. Under these circumstances, the present respondents i.e., the respondents No.3 to 6 are not entitled for the equal share in the suit properties. However, they are entitled in the share of the propositous along with the other sons. In view of this, the husband of the petitioner No.1, the respondent No.1 and the husband of the respondent No.2(a) are entitled for  $1/4^{\text{th}}$  share along with the propositous. These respondents No.3 to 6 are entitled for equal share along with the sons of propositous in the share of the propositous. Under these circumstances, the present petitioner being the wife of Sri. A.M. Shankaregowda, the son of the propositous is entitled for  $8/28^{\text{th}}$  share in the suit schedule properties by metes and bounds. The respondents No.1 and 2 are equally entitled for each  $8/28^{\text{th}}$  share in the suit

schedule properties by metes and bounds. The respondents No.3 to 6 are entitled for 1/28th share each in the suit schedule properties. Hence, I am of the opinion that the above said shares are to be declared in order to pass the final decree in the present petition. In this regard, these respondents are liable to pay the Court fees in order to draw the final decree in respect of their shares. Hence, I answer this point in the **affirmative**.

8. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that the application filed by the petitioner deserves to be allowed. Hence, I proceed to pass the following:-

### **ORDER**

The application U/o.20 Rule 18 r/w Sec.54 of CPC filed by the petitioner is hereby allowed.

The share of the petitioner, respondents No.1 and 2 are declared as each 8/28<sup>th</sup> share in the suit schedule properties by metes and bounds.

The shares of the respondents No.3 to 6 are declared as 1/28th share each in all the suit schedule properties by metes and bounds.

The respondents are hereby directed to pay the Court Fee in accordance with law.

Call on for steps by :- **19.07.2018.**

Senior Civil Judge,  
Maddur.