



(IN THE COURT OF ADDITIONAL
SMALL CAUSES AND SENIOR CIVIL
JUDGE, AT MYSURU)

PRESENT

Smt. ZARIFA BANU A.R.

B.A.L., LL.M.

JUDGE ADDITIONAL SMALL CAUSES, AT MYSURU

FDP NO.16/2018

Smt.Chennamma - Petitioner

-Versus-

Sri.Hutchappa and another - Respondents

I.A. NO.2

Smt. Chennamma - Applicant

-Versus-

Sri. Hutchappa and another - Opponents

ORDERS ON I.A.NO.2

I.A.No.2 filed by the petitioner under Sec.152 and 153 r/w sec 151 of C.P.C., seeking to amend judgment and decree by enlarge equal share to the petitioner passed in R.A No. 531/2014 dated 31.08.2017.

2. The petitioner has sworn to an affidavit stating that the petitioner had filed O.S No. 295/2006 for partition and separate possession and the said suit was dismissed on 13.07.2010. thereafter the plaintiff appeal before the II Addl Dist judge Mysuru. Hon'ble apex court allowed the appeal in RA No. 531/2014 allotted 1/9th share to the petitioner. As per the judgment of the supreme court in Vineetha Sharma's case prays to allot equal share to the petitioner. As such prays to allow the application.

3. On the other hand, opponent/respondent filed objections denying the contents of the application and stated that the plaintiff had not preferred any appeal against the judgment and decree passed by this court. The appellate court allotted 1/9th share to the petitioner. Aggrieved by the order of the appellate court respondents appealed before the Hon'ble High

court of Karnataka in RSA No. 2651/2017 and the same was dismissed. The suit schedule property is neither self acquired property of the father of the plaintiff nor ancestral property. Hence prays to dismiss the application.

4. Heard arguments both side. Perused material on records.

5. The points that would arise for my consideration are:-

- (1) Whether the applicant has made out grounds to modify the judgment and decree as sought for?
- (2) What order?

6. My findings on the above points are as follows:

Point No.1 : In the 'Negative'
Point No.2 : As per final orders
For the following:

REASONS

7. **Point No.1:** It is relevant to note that, the plaintiff has instituted this final decree proceedings to direct division of suit schedule properties and allot 1/9th share to the plaintiff. After issuance of summons to the respondents, this court appointed Tahsildar as court commissioner to effect partition. The Tahsildar effected partition as per preliminary decree of appellate court and submits its report. Meanwhile The petitioner come up with this application by seeking to modify the judgment and decree passed by this court and allot equal share in the suit schedule property.

8. It is relevant to note that, Hon'ble appellate court in RA No. 531/2014 made its detailed observation and hold that the suit schedule properties are the properties of the maternal grandfather of the petitioner as such

she is entitled to 1/9th share. The Hon'ble High court of Karnataka in RSA No. 2651/2017 also held that the suit schedule properties are the properties of maternal grandfather of the petitioner, as such confirmed the share allotted by appellate court and dismissed the second appeal. Admittedly the suit schedule properties owned by the maternal grandfather of the plaintiff out of the share of the mother of the plaintiff the Hon'ble appellate court allotted 1/9th share to the petitioner. As per the dictum of Hon'ble supreme court in Vineeth sharma's case daughters entitled to equal share in the coparcenaries or in an ancestral properties. In the case on hand the suit schedule properties were declared as properties of maternal grandfather of the petitioner, as such the properties are neither self acquired properties of the father of the petitioner nor ancestral properties. Thus the petitioner is not entitled to equal share as sought in the

application. Thus for all these reasons the application is liable to be dismissed. **Hence, Point No.1 answered in the Negative.**

9. **Point No.2**: In view of the above reasons, I proceed pass the following:

ORDER

I.A.No.2 filed by the applicant/petitioner under Sec. 152 & 153 r/w sec 151 of CPC is hereby dismissed with cost.

(Dictated to the Stenographer directly on the computer, revised & corrected by me and then pronounced in the open Court on this the 12th day of September, 2022)

**(ZARIFA BANU A.R.)
JUDGE, Addl., Court of
Small Causes & MACT.,
Mysuru.**