

KAMS600007472018



FDP/2/2018

**IN THE COURT OF SENIOR CIVIL JUDGE,**

**PERIYAPATNA**

**Present**

**Sri.A.SAMIULLA**

**B.Sc., LL.B.,**

**Senior Civil Judge,**

**Periyapatna.**

**Dated: 20<sup>th</sup> Day of January 2024**

**FDP.No.02 of 2018**

**Between:**

- 1.** Smt.Sannamma d/o late Giddegowda,  
w/o late Sannamarigowda,  
Age: 79 years, Occ: Agriculture  
r/o Amblare Village & Post,  
Haranahalli Hobli, Periyapatna Taluk  
Mysore District.
- 2.** Smt.Puttamma d/o Late Giddegowda,  
w/o Late Venkategowda, Age: 73 years,  
r/o Rajanabilaguli Village & Post,  
Haranahalli Hobli, Periyapatna Taluk,  
Mysore District.

**.....Petitioners/Plaintiffs.**

**(By Sri.CKM)**

**And:**

1. Smt.Doddamma d/o Late Giddegowda,  
w/o Late Doddamarigowda, Age: 81 years,  
Occ: Agriculture, R/o Bilagunda Village,  
Nilavadi Post, Haranahalli Hobli,  
Periyapatna Taluk, Mysore District.
2. Smt.Boramma d/o Late Giddegowda  
w/o Sannaswamygowda, Age : 70 years,  
Occ: Agriculture, R/o Sangarashettihalli,  
Village & Post, Bettadapura Hobli,  
Periyapatna Taluk, Mysore District.
3. Sri.Boregowda s/o Late Giddegowda,  
Age : 67 years, Occ : Agriculture  
R/o Bilagunda Village,  
Nilavadi Post, Haranahalli Hobli,  
Periyapatna Taluk, Mysore District.
4. Sri.Balaramegowda s/o Late Doddamarigowda,  
Age : 54 years, Occ: Agriculture,  
R/o Bilagunda Village,  
Nilavadi Post, Haranahalli Hobli,  
Periyapatna Taluk, Mysore District.
5. Sri.Lokesha s/o Late Doddamarigowda,  
Age : 50 years, Occ: Agriculture,  
R/o Bilagunda Village,  
Nilavadi Post, Haranahalli Hobli,  
Periyapatna Taluk, Mysore District.
6. Sri.Thimmegowda s/o Late Doddamarigowda,  
Age : 42 years, Occ: Agriculture,  
R/o Bilagunda Village,  
Nilavadi Post, Haranahalli Hobli,  
Periyapatna Taluk, Mysore District.

**...Respondents/Defendants.**

**(R1 to 6 by Sri.KSD**

**P/R by Sri JSN )**

**ORDER**

Petition is filed under Section 54 CPC seeking to draw final decree by virtue of preliminary decree passed in OS.No.11/14, wherein it is ordered that the plaintiffs-1 & 2 are entitled for 1/8<sup>th</sup> share each in the suit items-1 to 11; defendants-1 & 4 to 6 are jointly entitled for 1/8<sup>th</sup> share; defendant-2 is entitled for 1/8<sup>th</sup> share and defendant-3 is entitled for ½ share in the suit items-1 to 11. Suit is dismissed in respect of suit item-12.

**2.** After registration of petition; notices were issued. Though respondents mark their appearance but failed to file objections. Thereafter, Court Commissioners were appointed to make out a scheme of partition, who filed reports, which were rejected as the same were not in accordance with the preliminary decree and fresh commission was issued as per order dated 06.01.23.

**3.** Subsequently, petitioner filed application seeking modification of preliminary decree by stating that as per Vineeta Sharma's case the petitioner is entitled for equal share instead of notional share and also filed application to summon the records of OS.No.11/14. When the matter was set down for order on said applications the respondent-3 filed the objections to the main petition by contenting that; she has impugned the judgment by filing regular second appeal, which is pending for adjudication, as such present petition is not maintainable. Petitioner is no way related to the petition schedule properties. If the judgment is set aside then the commission work will be of no use. If the measurement is carried on she will be subjected to hardship. Hence, she prayed to reject the petition.

**4.** Heard arguments.

5. Following point arises for consideration;

*Whether the objections raised by the respondent-3 are sustainable?*

6. Answer to the above point is in *negative* for the following;

**REASONS**

7. At the outset; petition is filed under Section 54 CPC seeking to draw final decree by virtue of preliminary decree passed in OS.No.11/14.

8. It is worth to note that the main objection raised by respondent-3 is that she has filed appeal challenging preliminary decree on the basis of which present petition is filed. But she has not produced any document to show that she has filed appeal or at the least she has not furnished case number.

9. In addition to above it is well known that; merely filing an appeal or suit would not *ipsofacto* constitute any impediment to execute a decree otherwise lawfully

obtained. Mere filing of appeal before appellate Court does not operate as stay of the proceedings unless the appellate Court specifically granted an order of stay. Here, no stay order is produced. She also contended that the petitioner is no way related to the petition schedule property; said contention is not tenable because already preliminary decree is passed holding the right of petitioner over petition schedule properties; unless it is set aside by competent Court of law it holds the field. Hence, above point is answered in the negative and proceeds to pass the following;

**ORDER**

Objections raised by the respondent-3 are not sustainable.

No order as to costs.

(Dictated to the Stenographer, directly typed by her on computer, script corrected by me and then pronounced in the open court on this the 20.01.24).

*sd/-*

**(A SAMIULLA)**  
**Senior Civil Judge,**  
**Periyapatna.**