

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: 29<sup>th</sup> Day of February 2024**

**FDP.No.02 of 2018**

**Between:**

Smt.Sannamma & Anr.

***.....Petitioners/Applicants***

**And:**

Smt.Doddamma & Ors.

***...Respondents/Opponents.***

Provision under which IA is filed	u/Order 20 Rule 18 r/w Section 151 of CPC
Relief sought for	To modify preliminary decree
Date of filing of application	07.07.2023
Application No.	5
Date of filing objection	---
Date of order	29.02.2024

**:Order on IA-5; under Order 20 Rule 18**  
**r/w Section 151of CPC:**

Petitioners moved this application seeking to modify the preliminary decree passed in OS.No.11/14 by re-allotting 6/25<sup>th</sup> share each to the petitioners in suit items-1 to 11 by virtue of principles laid down in the case of Vineetha Sharma.

2. Respondents have not filed objections.
3. Heard arguments.
4. Following points arise for consideration:
  1. Whether petitioners made out a case to modify the preliminary decree?
  2. What order?
5. Findings to the above points are as under;

***Point-1: Affirmative.***

***Point-2: As per below***

***for the following;***

**REASONS**

6. **Point-1:** At the outset; petition is filed for drawing up final decree on the basis of preliminary

decree passed in OS.No.11/14 wherein 1/8<sup>th</sup> share each in the suit items-1 to 11 were allotted to the petitioners.

**7.** On the basis of said preliminary decree the final decree proceedings are filed. Now petitioners filed the application at hand for the relief stated *supra* by stating that; as per judgment passed in Vineetha Sharma V. Rakesh Sharma's case on the file of Hon'ble Apex Court the daughters are also entitled for equal right as that of a son as such preliminary decree passed in OS.No.11/14, wherein share is allotted to the petitioners on the basis of notional partition is to be modified and to allot equal share to them.

**8.** Respondents have not objected the application, as they failed to file any objection statement.

**9.** In case of Vineetha Sharma V. Rakesh Sharma &

Ors, **(2020)9 SCC 1**, the Hon'ble Apex Court held that; *the effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognizes a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 09.09.05 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 09.09.05, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6 (3). In this decision the decision rendered in case of Prakash Vs Pulavathi is overruled. In the said case it is also held that preliminary decree does not bring about any irreversible situation, pending final decree shares are liable*

*to be varied on account of intervening events, suit is not over till passing of final decree, Court has power to reverse a preliminary decree if changed circumstances so demand. Unless & until actual partition is fully worked out, rights have to be worked out as they exist at time of final decree. It is also held that; substituted Section-6 required to be given full effect though preliminary decree has been passed, equal share to that of son should be given to daughters in pending proceedings for final decree or in an appeal.*

**10.** In Civil Appeal Nos.188 & 189 of 2018 dated: 01.02.18 on the file of Hon'ble Apex Court, at para-27 it is held that; *the rights of daughters in co-parcenary property as per the amended Section 6 are not laws merely because the preliminary decree has been passed in a partition suit. So far as partition suits are concerned the partition becomes final only on the passing of final decree. Where such situation arises, the preliminary decree would have to be amended taking into account the change in the*

*law by the amendment of 2005.*

**11.** Respondents argued that; appeal is filed against preliminary decree. But no document is produced to that effect. 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 appellate Court specifically granted an order of stay. Here, no stay order is produced. Hence, point-1 is answered in affirmative.

**12.** Before parting let us consider the modify share i.e.,  $6/25^{\text{th}}$  each as claimed by the petitioners. It appears that the share calculated by the petitioners is not correct because the deceased propositus has four daughters and a son; all are alive; they are entitled for equal share i.e.,  $1/5^{\text{th}}$  share each.

**13. Point-2:** By virtue of above findings, Court proceeds to pass the following;

**ORDER**

IA-5; under Order 20 Rule 18 r/w Section 151 CPC filed by the petitioners is allowed.

Preliminary decree is modified by awarding 1/5<sup>th</sup> share each to the petitioners in suit items-1 to 11.

Draw modified preliminary decree accordingly.

No order as to costs.

(Dictated to the Stenographer and transcribed by her, corrected and initialed by me and then pronounced in the open Court on 29.02.24).

sd/-  
**(A.Samiulla)**  
**Senior Civil Judge,**  
**Periyapatna.**