

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., AT
PERIYAPATNA**

Present: **Smt.Mohanakumari.N.B. L.L.M.,**

Civil Judge & JMFC.,

Dated: this 2nd day of June 2021

FDP.No.8/2015

Petitioner:

M.T.Shivadevappa,
S/o. Late Thammaiahshetty @
Basashetty,
Aged about 77 years,
Business and Agriculturist,
R/at Post office road,
Bettadapura village,
Bettadapura hobli,
Periyapatna taluk.
Mysuru district.

[By Adv.,Sri.B.P.P.]

V/s

Respondents:

1. Siddalingamma,
W/o. Late. A.G.Thammaiahshetty,
Since dead by her LR's

1(a). Jayashree,
W/o M.T.Shivadevappa,
Aged about 60 years,
R/at Post office road,
Bettadapura village,
Bettadapura hobli,
Periyapatna taluk.

1(b). A.T.Dasharatha,
S/o. Late. A.G.Thammaiahshetty,

Aged about 58 years,
R/at # 289, 2nd cross road,
2nd stage, north Bhogadi,
Mysuru.

- 1(c). A.T.Shailashetty,
S/o. Late. A.G.Thammaiahshetty,
Aged about 56 years,
R/at # 66, 2nd Main road,
M.C.R.T.C., Layout,
Outer ring road,
J.P.Nagara, Mysuru.
- 1(d). Sukanya,
W/o. C.K.Rajashekara,
Aged about 54 years,
R/at Chowkalli village,
Kalnahalli post,
K.R.Nagara taluk,
Mysuru district.
- 1(e). A.T.Virupaksha,
S/o. Late. A.G.Thammaiahshetty,,
Aged about 52 years,
R/at Anechowkuru road,
Periyapatna town,
Periyapatna taluk.
- 1(f). A.T.Harishkumar,
S/o. Late. A.G.Thammaiahshetty,,
Aged about 49 years,
R/at Post office road,
Bettadapura village,
Bettadapura hobli,
Periyapatna taluk.
- 1(g). Sunilkumar,
S/o. Late.Srimathi & H.B.Prakash,
- 1(h). Anilkumar,
S/o. Late.Srimathi & H.B.Prakash,

Aged about 34 years,
Both are R/at # 1822,
K.Block, Kuvempunagara,
Mysuru.

2. M.T.Thotappashetty,
S/o. Late.Thammaiahshetty @
Basashetty,
Since dead by her LR's
- 2(a). Prakasha,
S/o. Late.M.T.Thotappashetty,
Aged about 52 years,
Business,
- 2(b). Thotappa @ Ashoka,
S/o. Late.M.T.Thotappashetty,
Aged about 50 years,
Business,
- 2(c). Yadiyurappa,
S/o. Late.M.T.Thotappashetty,
Aged about 48 years,
Business,
- 2(d). Shivamma @ Shilpa,
D/o. Late.M.T.Thotappashetty,
Aged about 46 years,
Housewife,
- 2(e). Babu,
S/o. Late.M.T.Thotappashetty,
Aged about 44 years,
Business,
all are R/at Sankethi beedi,
Bettadapura village & post,
Bettadapura hobli,
Periyapatna taluk,
Mysuru district.

3. M.T.Rajashekharashetty,
S/o. Late. Thammaiahshetty @
Basashetty,
Aged about 75 years,
Agriculturist,
R/at Athigodu village & post,
Bettadapura hobli,
Periyapatna taluk,
Mysuru district.
4. M.T.Nagaraju,
S/o. Late. Thammaiahshetty @
Basashetty,
Aged about 73 years,
Business and Agriculturist,
R/at Sankethi beedi,
Bettadapura village & post,
Bettadapura hobli,
Periyapatna taluk,
Mysuru district.

**[R1(a to d, f to h) Exparte]
[R1(e) Inperson]
[R2(a, b & e) by Adv., Sri.C.K.M.]
[R2(c) & R3 by Adv., Sri.S.N.G]
[R4 Adv., Sri.B.M.K.]**

ORDER

The present petition is filed for drawing up of final decree as per the preliminary decree passed in O.S.No.247/2011 by demarcating 1/5th share of the petitioner in the petition schedule properties by metes and bounds.

2. After institution of the petition, notices were served on the respondents. The respondent No.2 to 4 appeared before the court

through their respective counsels. The respondent No.1 even after service of notice of the petition remained absent before the court and hence, he was placed *exparte*. The respondent No.3 and 4 neither objected the petition nor objected I.A.No.1 and 2 filed by the petitioner. However, the respondent No.2 objected the petition by filing statement of objections. In the said objections he pleaded his ignorance about decree passed in O.S.No.247/2011 in which petitioner is allotted with 1/5th share. He denied the claim of the petitioner in the petition schedule properties. He has taken up other contentions regarding the nature of suit schedule properties which should have been taken in the suit. He further stated that, as R.A.No.52/2015 against the decree passed in O.S.No.247/2011 is pending it is prayed to stay the proceedings.

3. This court on allowing I.A.No.I and II filed by the petitioner appointed Taluka Surveyor as commissioner to give his report about division of item No.4 to 7 of the petition schedule properties and also appointed Junior Engineer, PWD to give his report regarding division of item No.1 to 3, 8 & 9 of the petition schedule properties. The commissioners filed their reports along with sketches. The petitioner has not objected the reports of the commissioners.

4. The respondent No.2(a) to (c) have objected the reports of the commissioners by filing statement of objections contending that the commissioner in his report stated that he gave notice on 30.12.2016 informing that he will execute commission warrant on 03.12.2016. It is illegal and against to the principles of natural justice. The commissioner who gave his report about division of site and buildings did not serve prior notice on the LR's of the respondent No.2. On the date when the commission warrant was stated to have been executed, the respondent No.1 and 2 were not alive. The commissioners by colluding with the petitioner filed false reports before the court. Hence, it is prayed to reject the commissioner reports.

5. Heard and perused.

6. The point that arises for my consideration is as follows:

*Whether the commissioners reports shall
be accepted?*

7. My answer to the above point is in the **Affirmative** for the following,

REASONS

8. The present petition is filed for partition of 1/5th share of the petitioner by metes and bounds in the petition schedule properties as per the preliminary decree passed in O.S.No.247/2011. The respondent No.2 in his objections pleaded his ignorance about the

decree passed in O.S.No.247/2011. The petitioner has produced certified copy of preliminary decree passed in O.S.No.247/2011. On perusal of the said decree it is evident that the petitioner is entitled to 1/5th share in the petition schedule properties. Ignorance of the respondent No.2 has no effect on the petition. Further the respondent No.2 has taken up other contentions which were taken in the main suit. They are not valid contentions at this stage. He further contended that, R.A.No.52/2015 is pending for trial and therefore this petition has to be stayed. However, the petitioner during the proceedings of this case produced certified copy of judgment and decree passed in R.A.No.52/2015. On perusal of the said document it is evident that regular appeal preferred against the judgment and decree passed in O.S.No.247/2011 was dismissed. Therefore, the contentions taken by the respondent No.2 in the objections against the petitioner are not tenable.

9. The LR's of respondent No.2 in the objections filed to the commissioners reports stated that the commissioners have not served prior notices on them. But on perusal of the commissioners reports it is evident that the commissioners have served notices on the parties to the proceedings. It is further contended that in the copy of notice filed to the court by the Taluka Surveyor it is stated that date of notice

was 30.12.2016 and execution of commission warrant was 03.12.2016. On perusal of the report submitted by the Taluka Surveyor it is evident that he executed warrant on 03.12.2016. Office copy of the notice bears signature of one Prakash. The name of respondent No.2(a) is also Prakash. In the vakalath filed by the Ld.counsel for respondent No.2(a) there is signature of the respondent No.2(a). On comparison of signature found on vakalath and on copy of notice, this court is of the considered view that both signatures belong to same person. It is material that commissioner should intimate about execution of commission warrant well in advance. It is not material that when it was informed. Therefore, the contentions taken by the LR's of the respondent No.2 are not tenable.

10. On perusal of the commissioners reports it is evident that division of 1/5th share of the petitioner in the petition schedule properties as suggested in the reports is correct and proper. Therefore, there are no impediments to this court to accept the reports and to effect the partition as per the reports. Hence, the following;

ORDER

This petitioner filed by the petition is
hereby allowed.

The commissioner reports along with sketches are hereby accepted.

The petitioner is allotted his 1/5th share in Sy.No.56 measuring 13½ guntas, Sy.No.65/5 measuring 38¼ guntas, Sy.No.146 measuring 1 acre 32½ guntas and Sy.No.57 measuring 13 ½ guntas marked in orange colour in the sketches submitted by the Taluka Surveyor.

The petitioner is allotted his 1/5th share in item No.1 to 3, 8 & 9 of the petition schedule properties in portion marked as 'P' in sketches filed by the Junior Engineer, PWD, Periyapatna.

The commissioner's reports along with sketches form part and parcel of the final decree.

Draw final decree accordingly if N.J. stamp is furnished.

Petition is disposed of accordingly.

(Dictated to the Stenographer, transcript, revised, corrected and then pronounced by me in the open court, this the 2nd day of June 2021)

(Mohanakumari.N.B.)
Civil Judge & JMFC.,
Periyapatna.