

KAMS700001302011



**IN THE COURT OF SENIOR CIVIL JUDGE AND MACT
AT T.N.PURA, MYSORE**

FDP/5/2011

PRESENT: Sri Mahavir M.Karennavar B.com, LL.B. (Spl.)
Senior Civil Judge & JMFC, T. Narasipura.

DATED THIS THE 02nd DAY OF SEPTEMBER 2022

Petitioner : Smt. Rajamma,
W/o Chandrappa,
D/o Shivanna,
Aged Major,
R/at: Alanahalli village,
Kollegala Taluk,
Chamarajanagara District.

{ By **Sri. B.R.C.M.**, Adv. }

-Vs-

Respondents : 1. Sri. Javanappa,
S/o Late Shivanna,
Aged Major.

2. Smt. Shivamma,
W/o Shivaswamy,
D/o Late Shivanna,
Aged Major,
R/at: Mullur village,
Kollegala Taluk,
Chamarajangara District.

3. Sri. Naganna @ Nagaraju,
Aged Major,
R/at: Door No.2886/3,
Behind Akkammani hospital,
Basaveshwara Road, Mysuru.

4. Sri. Shivappa,
S/o Late Kalegowda,
Aged Major,
R/at: Lingegowdanahalli village,
Kasaba Hobli,
Tumbala Dakhale,
T.Narasipura Taluk.
5. Sri. B.C.Shankar,
S/o B.S.Channabasappachar,
Aged Major,
R/at: No.36, 5th Main,
Subhas Nagara,
N.R.Mohalla, Mysuru.
6. Sri. Mahalingappa,
S/o Puttamadappa,
Aged Major.

Respondent Nos.1 and 6
are R/at: Tumbala Village,
Kasaba Hobli,
T.Narasipura Taluk.

{R1 By **Sri. G.N.S.**, Adv.}

{R2 By **Sri. B.M.N.**, Adv.}

{R3 & 6 By **Sri. K.B.B.**, Adv.}

{R4 By **Sri. S.M.**, Adv.}

{R5 By **Sri. B.N.**, Adv.}

ORDER

This petition is filed by the petitioner under Order 20 Rule 18 of Code of Civil Procedure, praying the Court to draw Final Decree in terms of preliminary decree in OS No.77/2006(Old OS No.316/1996) dated: 25.09.2006 as modified by Hon'ble Appellate court in RA No.382/2006 by effecting the partition and division of properties by metes and bounds.

2. The petition is accompanied with the certified copies of the preliminary decree passed by this court in OS.No.77/2006, dated: 25.09.2006 and judgment in RA No.382/2006 dated 19.10.2010 passed by Hon'ble Fast Track Court IV, Mysuru. A perusal of preliminary decrees, it goes to show that, the present petitioner being the plaintiff is held to be entitled to $1/3^{\text{rd}}$ in all the suit properties i.e., land bearing Sy.No.381 measuring 06 acres 23 guntas, Sy.No.167/1 measuring 1 acre 20 guntas, Sy.No.29 measuring 1 acre 7 guntas, Sy.No.138/2 measuring 0.05 guntas, Sy.No.138/1A measuring 8 guntas, Sy.No.138/1B measuring 02.20 guntas, Sy.No.138/3 measuring 0.14 guntas, Sy.No.262 measuring 0.19 guntas, Sy.No.348/1 measuring 1 acre 37 guntas Sy.No.380/2 measuring 1 acre 1 gunta and house property bearing assessment No.358 consisting of 4 pillered thotti all are situated at Tumbala village of T.Narasipura Taluk.

3. After filing of the petition, notices were issued to the respondents. The respondent No.1 filed the objection denying the share of petitioner. He contended that, as per the judgment of Hon'ble Supreme Court reported in **2015(4) KCCR 3265(SC)**, the plaintiff is not entitled to equal share as that off 1st respondent. The petitioner being the female member is only entitled to notional share. He further contended that, as per the Hindu Succession (Amendment Act)-2005 the petitioner shall not

get equal share. Therefore, he prayed to reject the application.

4. In addition to the objection statement, the respondent No.1 had filed IA No.VI under Sec.152 of CPC praying this court to alter the decree and modify the shares as per the decision of Hon'ble Apex Court reported in **AIR 2016 SC 769** in the matter of *Prakash V/s Phulavati*. This court after considering the submissions and rival contentions has rejected the application by relying on the subsequent decision of Hon'ble Apex Court reported in **(2020) 9 SCC 1** in the matter between *Vinita Sharma V/s Rajesh Sharma*. Thus, the main objection of respondent No.1 has been clarified by this court and set at right as such there is no other measure objection for enforcement of final decree.

5. The suit properties in this suit are agricultural lands and also a house property. The Tahsildar, T.Narasipura and an advocate were appointed as commissioners. Therefore, the copies of decree were sent to Tahsildar, T.Narasipura and advocate commissioner to make proper division in the suit properties as per Section 54 of Code of Civil Procedure and to suggest the proper divisions to this court so as to enable this court to draw proper and effective Final Decree. Further, the commissioners were directed to make the divisions in the properties taking into consideration the quality of soil, availability of road

and access of water etc to the suit land and other relevant factors.

6. The commissioner who was appointed for division in the landed properties reported that, suit item No.3 ie., land in Sy.No.29 measuring 01 acre 7 guntas situated at Thumbala village is not available for making divisions. The advocate for petitioner submitted that, no objection to accept the report as it is. Similarly, some of the advocates for the respondents have also submitted no objection to accept the commissioners report with respect to the availability properties. Therefore, this final decree is being drawn by keeping open the dispute with respect to suit item No.3 i.e., land in Sy.No.29 measuring 1 acre 7 guntas.

7. The Revenue Commissioner submitted dated 07.04.2021 as per letter No.ಭೂ.ಸ.ನಿ./ಸಿ.ಪಿ.ಡಿ.,/03/2014-15. He filed the report along with Panchanama and Sketch stating that he has divided the properties as per the preliminary decree passed by the court in OS.No.77/2006 as modified in RA No.382/2006 in the presence of respectable persons of the village and also the petitioner of the present petition etc. The report of the commissioner is accompanied with his report, panchanama and the sketch.

8. Another commissioner i.e., advocate of T.Narasipura Bar Association has submitted his commission report

along with memo dated 27.08.2019. He has also produced panchanama, sketches prepared by him, copies of notices etc.

9. The petitioner submitted that she has no objection to the Reports of the Commissioners and prayed to pass final decree as per the Commissioners Reports.

10. The learned advocate for respondent Nos.1 and 3 have filed the objection to the commissioners reports. It is contended that, the commissioners have not followed due procedure of law. The commission work are conducted without the knowledge of parties. The parties have not furnished memo of instructions even than the commissioners have prepared the report and submitted to this court. Therefore, the commissions are not worth acceptable. Therefore, it is prayed to reject the reports.

11. Heard the advocates appearing for the parties on the petition and Commissioner's report.

12. The judgment in OS No.77/2006 as modified by appellate court in RA No.382/2006 reflected that, the present petitioner is awarded 1/3rd share in all the suit properties. The judgment passed by this court has been upheld and confirmed by the Hon'ble IV Addl. Fast Track Court, Mysuru in RA No.382/2006 dated 19.10.2010. Although the respondent No.2 say that, there is second appeal pending, no order is placed to show that, either

there is stay or there is modification of judgment and decree passed by this court. Therefore, there is no scope/entertaining objection statements of the respondents except to see whether the commissioners reports are proper and correct or not.

13. The learned advocate for petitioner as well as advocate for respondents submitted that, there is no stay of execution of decree. Thus, in the circumstances of the case, drawing of final decree cannot be stopped merely because of pendency of appeal.

14. Heard the Counsel on feasibility and perused the records and Reports of the Commissioners with Sketch. I have also carefully gone through the entire material placed on record. Looking to the judgments and decrees and looking to the reports of the commissioners, the objection raised by the respondents are not worth to be accepted. There is nothing wrong or mistake committed by the commissioners in preparing and conducting the commissioner work.

15. The reports submitted by commissioners show that they have made 03 equal Hissas in the suit schedule properties.

16. So far as house property is concerned, the commissioner has divided house property in 3 equal parts making them as 'A', 'B' and 'C'. Looking to the reports of

commissioners and submissions, I feel it just and proper to hold that, one share shown in ABCD is feasible to the petitioner of this case. Similarly, the portion shown as CDEF can be allotted to the share of respondent No.2 and family members. EFGH portion can be allotted to the share of 1st respondent and family members.

17. So far as landed properties are concerned, in Sy.No.138/1A, the commissioner has shown 1/3rd share i.e., 16 guntas to the petitioner as Hissa No.3. He has shown 16 guntas to Shivamma i.e., 2nd respondent and her family members as suitable in Hissa No.2 and 1A. He has shown 15 guntas suitable to respondent No.1 Javanappa and his family members and shown it as 1B. I feel and accept the same to be suitable for the parties.

18. Similarly in lands at Sy.No.167/1, 162/1, 348/1, 380/2 and 381 the commissioner has made 3 divisions and has shown Hissa I as suitable for petitioner Rajamma and has shown Hissa II as suitable for respondent Shivamma and her family members. Similarly, he has shown Hissa III suitable for respondent Javanappa as suitable. Looking to the shape of properties, looking to the convenience of parties and all other aspects I feel it just and proper to accept report of commissioner as it is.

19. Looking to the size and shape of the land and house, the recommendation made by the Commissioners appears to be correct and convenient for the parties. The

Panchanama drawn by the Commissioners is endorsed by the petitioner and also by the witnesses, who were present at the time of making division of the lands as shown by the Commissioners in the Sketch.

20. Therefore, looking to the report, facts and circumstance of the case, I feel that, portion shown by the commissioners i.e., Tahsildar of T.Narasipura and advocate are proper and correct.

21. Looking to the above observations, there is no impediment for the Court to accept the Reports since they are feasible. Hence, I proceed to pass the following:

ORDER

Reports of the Court Commissioners are accepted and Office is directed to draw final decree in accordance with the Commissioner's Reports.

Consequently, the portions shown as ABCD in house property shall be allotted to the share of petitioner Rajamma. Portion shown as CDEF shall be allotted to the share of 2nd respondent and his family members. Portion shown as EFGH in the house property shall be allotted to the share of 1st respondent and his family members.

Similarly, the shares suggested by the commissioner in the landed properties which already discussed in the body of order shall be allotted to the share of petitioner/plaintiff.

The office shall draw the decree only after receipt of necessary stamp duty for drawing of Final Decree. The respondents are also at liberty to pay the requisite stamp duty and court fee for the purpose of drawing of final decree.

No order as to cost.

(Dictated to the Stenographer on Computer directly, typed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 02nd day of September, 2022).

(MAHAVIR.M.KARENNAVAR)
SENIOR CIVIL JUDGE & JMFC,
T.NARASIPURA.