

KAMS700037322022



**IN THE COURT OF SENIOR CIVIL JUDGE AT  
T. NARASIPURA**

**PRESENT**

**SRI. HANUMANTHA G.H.**

B.A.L., LL.M.

Senior Civil Judge, T. Narasipura.

**F.D.P. NO.3/2022**

DATED THIS 01<sup>st</sup> DAY OF JUNE 2023

**PETITIONERS**

- : 1. Smt. Lakshamma,  
W/o. Late Ramegowda,  
D/o. Late Kalegowda,  
Age: 73 years,  
R/o: No.14/99, Market Road,  
Ward No.20, Bannur Town,  
Tq: T. Narasipura, Dist: Mysuru.
2. Sri. Kalegowda,  
S/o. Late Kalegowda,  
Age: 67 years,  
R/o: Door No.346, In front of  
Hospital, Horakere Street,  
Bannur Town, Tq: T. Narasipura,  
Dist: Mysuru.
3. Smt. Gowramma,  
W/o. Late Siddegowda,  
D/o. Late Kalegowda,  
Age: 63 years,  
R/o: Ramasamudra Village,  
Kasaba Hobli, Tq: T. Narasipura,  
Dist: Mysuru.

(By Sri. P. Sathish, advocate)

**Vs.**

**RESPONDENT**

: . Sri. Swamy S/o. Late Kalegowda,  
Age: 55 years,  
R/o: Horakere Street,  
Bannur Town, Tq: T. Narasipura,  
Dist: Mysuru.

(Exparte).

**ORDER**

The petitioners have filed the petition under Order XX Rule 18 R/w. Section 54 of C.P.C seeking to pass the final decree on the basis of the preliminary decree passed in O.S. No.10/2021.

**2. The case of the petitioners is that:-**

The petitioners filed the suit in O.S. No.10/2021 on the file of this court for partition and separate possession. This court decreed the suit on 13.10.2022 and granted 1/4<sup>th</sup> share each to the petitioners. The respondent did not challenge the case of the petitioners in the suit and has not filed the appeal against the judgment and decree of this court. Hence, the petitioners have filed the petition to get the final decree on the basis of preliminary decree.

**3.** The respondent has not appeared before the court despite service of notice. Hence, he is placed exparte.

**4.** The Tahsildar, T. Narasipura is appointed as a court commissioner to submit a scheme of partition

pertaining to the suit properties. He has filed the report with scheme of partition.

**5.** Learned counsel for the petitioners has submitted no objection to the commissioner report.

**6.** I have heard the argument of learned counsel of the petitioners and perused the materials on record.

**7.** The points for consideration are:-

1. Whether there are sufficient grounds to draw a final decree in terms of preliminary decree and the report and sketch of the commissioner?

2. What order?

**8.** The answers to the above points are:-

Point No.1: In the affirmative.

Point No.2: As per final order.

### **REASONS**

**9. POINT NO.1:-** Learned counsel for the petitioners has prayed to allow the petition by accepting the commissioner report.

**10.** As per the preliminary decree passed in O.S. No.10/2021 on 13.10.2022, the petitioners herein are

entitled to 1/4th share each in the suit properties bearing Sy.Nos.127/2 measuring 30 guntas, 128/1 measuring 14 guntas, 129/1 measuring 39 guntas, 1536/3 measuring 15 guntas, 1537/2 measuring 17.8 guntas, 1537/3 measuring 17.08 guntas and 1536/1 measuring 14.08 guntas.

**11.** After the Tahashildar, T. Narasipura is appointed as the court commissioner, he is found to have issued the notices to the parties on 03.02.2023 as found from the copy of notice and postal receipt produced along with the commissioner report. The copy of the statement dated 10.02.2023 shows that the measurement of the suit properties was conducted on the said date in order to submit the scheme of partition as per preliminary decree.

**12.** The sketch of the commissioner produced along with the report shows that he has mentioned the survey numbers and measurements of the suit properties as per survey records and the preliminary decree of this court. They also show that he has divided four parts of total extent of the suit properties, three are for 3/4th shares of the petitioners and another is for the share of the respondent.

**13.** Now it is necessary to examine as to whether the proposed allotment of the lands in the report by the commissioner is in accordance with preliminary decree or not. The commissioner has clearly proposed to allot 3/4th

shares to the petitioners shown in the Block Nos.II to IV in all the properties except the property of Sy.No.129/1 as per the preliminary decree. He has also proposed to allot 3/4th shares to the petitioners in the Block Nos.I to III in the property of Sy.No.129/1. He has further proposed to allot 1/4th shares to the respondent in Block No.I in all the properties except the property of Sy.No.129/1 and Block No.IV in the property of Sy.No.129/1. The proposed allotment is as per preliminary decree only.

**14.** Therefore, having considered the preliminary decree and also the proposed allotment of the properties as per preliminary decree by the commissioner, I am of an opinion that it is necessary to accept the commissioner report and allot the lands shown in the Blocks of the commissioner report to the petitioners. Hence, the petitioners have made out the grounds to draw a final decree. Accordingly, the **point No.1** is answered in the **affirmative.**

**15. POINT NO.2:-** In view of the finding on the point No.1, I proceed to pass the following:-

### **ORDER**

The petition filed by the petitioners under Order XX Rule 18 R/w. Section 54 of CPC seeking to draw a final decree is allowed.

The office is to draw the final decree in terms of the court commissioner report and sketch pertaining to the petition schedule properties by allotting the lands shown in the Blocks of the report to the petitioners.

The commissioner report is accepted. It is the part of this order.

There is no order as to costs under the circumstances of this case.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in the Open Court on this 01<sup>st</sup> day of June, 2023.)

**(HANUMANTHA G.H.)**  
Senior Civil Judge,  
T. Narasipura.

(Separate order is passed and pronounced in the open court)

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Senior Civil Judge,  
T. Narasipura.