

KAMS300010612020



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 19th day of June, 2026.

FPD No.9/2020

- Petitioners:
1. Sannamanchamma, W/o Thimmanaika,
D/o Late Devanaika,
Aged about 50 years,
R/at Gurugalakatte Road,
Kalkunike, Hunsur.
 2. Parvathi, W/o Lakshmananaika,
D/o Late Devanaika,
Aged about 62 years,
R/at Thoreyara Street,
Ponnampete, Kasaba Hobli,
Kodagu District.
 3. Nanjamma, W/o Narasanaika,
D/o Late Devanaika,
Aged about 53 years,
R/at Bannikuppe village, Kasaba Hobli,
Hunsur Taluk.

4. Jayamma, W/o Krishnanaika,
D/o Late Devanaika,
Aged about 51 years,
R/at Thoreyara Street,
Ponnampete, Kasaba Hobli,
Kodagu District.
5. Savithri, W/o Marinaika,
D/o Late Devanaika,
Aged about 48 years,
R/at Bannikuppe village, Kasaba Hobli,
Hunsur Taluk.

-Vs-

- Respondents:
1. Kapaninaika, S/o Late Devanaika,
Aged about 60 years,
R/at Maraduru village, Kasaba Hobli,
Hunsur Taluk.
 2. Nanjamma, W/o Late Motanaika,
D/o Late Devanaika, Aged about 66 years,
R/at Jabagere village, Gavadagere Hobli,
Hunsur Taluk.

1.	Provision under which the application is filed	:	Under Section Section 153 of CPC
2.	Relief sought for	:	To modify the preliminary decree
3.	The date on which the application is filed	:	25.11.2022
4.	Number of the applications	:	IA No.I
5.	The date on which the objection is filed by opponent	:	10.09.2025
6.	The date on which the orders passed on the said application	:	18.06.2026

ORDERS PASSED ON IA NO.I

The learned counsel for the petitioners filed IA No.I under Section 153 of CPC seeking for modifying the preliminary decree in view of the principles laid down by Hon'ble Apex Court of India in the decision of Vineetha Sharma and to declare that the petitioners are entitled for 1/7th share each in the suit schedule properties.

2. The application is supported with the affidavit of the 4th petitioner wherein she has stated that, herself and petitioners No.1 to 3 and 5 are sisters to each other and their mother during her lifetime filed a suit in OS No.60/2006 against the defendants and the said suit came to be decreed on 09.06.2011 and aggrieved by the said judgment the defendants have preferred an appeal before Hon'ble District and Sessions Judge Mysore in RA No.573/2011 and the said appeal came to dismissed on 02.04.2012. In the suit the court has ordered for share only infavour of their mother and the said share has not been divided among them. They have also got equal share in the suit schedule properties. It is further stated that the Central Government has notified that the female heirs have got equal share and in the decision of Vineetha Sharma, the Hon'ble Apex court of India also declared the same. It is further stated that till now final decree has not been drawn and as such this Court has got power to modify the shares. If the application is not allowed they will be

put to great hardship. There is also chance of multiplicity of proceedings. Hence, prayed to allow the application by declaring their 1/7th share each.

3. On the other-hand learned counsel for the 1st respondent has filed objection contending that the application is not maintainable under law or on facts and it is filed to drag on the proceedings and to cause trouble to the 1st respondent. The mother of the petitioner namely Kalamma filed suit for partition and separate possession against the 1st respondent in respect of the suit schedule properties in OS No.60/2006 and the suit came to be decreed on 09.06.2011 and determined the share of the petitioner as 1/18th each. The 1st respondent preferred an appeal before Hon'ble District and Sessions Judge, Mysore in RA No. 573/2011 which came to be dismissed on 02.04.2012. Against the said judgment the petitioners have not filed any appeal seeking modification of their shares or cross appeal in RA No. 573/2011. As such the present application U/Sec.153 of CPC is not maintainable. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the petitioners. In spite of providing opportunity counsel for respondent No.1 not chosen to address the arguments. Perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the petitioners have made out sufficient grounds to modify their share in the decree schedule properties?
 2. What order?
5. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:-** The petitioners have filed this petition against the respondents under Order 20 Rule 17 of CPC seeking for passing final decree in respect of the preliminary decree passed by this court in OS No.60/2006. As per the petition averments the suit in OS No.60/2006 came to be decreed on 09.06.2011 declaring that the petitioners are entitled for 1/8th share in the decree schedule properties. It is an admitted fact that aggrieved by the judgment and decree passed in OS No.60/2006 the 1st respondent has preferred an appeal before Hon'ble District and Sessions Court Mysore in RA No. 573/2011 which came to be dismissed on 02.04.2012. As such the petitioners have filed the petition for passing final decree as per the preliminary decree in OS No.60/2006.

7. It is also stated in the petition that earlier they have filed FDP No.1/2014 which came to be dismissed for non prosecution. Therefore it is very much clear that no final decree has been drawn in respect of the preliminary decree in OS No.60/2006. The present application is filed U/Sec.153 of CPC on the basis of decision rendered by Hon'ble Supreme Court of India in the case of Vineetha Sharma. At the time of addressing the arguments learned counsel for the petitioners also relied upon the decision of Hon'ble Supreme Court of India in:

2023 LiveLaw (SC) 262

Between: Prasanta Kumar Sahoo and others V/s Charulata Sahu and others

Wherein Hon'ble Supreme Court of India has held as hereunder:

In case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any legislative amendment or any subsequent event takes place which results in enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be into consideration and given effect to while passing final decree in the partition suit. Even though filing of partition suit brings about severance of status of joint-ness, such legislative amendment or subsequent event will have to be taken in to consideration and given effect to in passing the final decree in the partition suit. This is because the partition suit can be regarded as

fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu Family takes place by meets and bounds.

As the law governing the parties has been amended before the conclusion of the final decree proceedings, the party benefitted by such amendment can make a request to the Trial Court to take cognizance of the amendment and give effect to the same.

8. Herein this case admittedly the final decree has not been drawn. On 07.11.2025 this Court has directed the petitioners to produce the death certificate of Kalamma and Deveeramma and also directed them to say about any legal heirs left behind by Smt.Deveeramma who is 3rd defendant in OS No.60/2006. To that effect learned counsel for the petitioners produced the copy of death certificate of Kalamma who is none other than mother of the petitioners. It shows that on 31.08.2017 Kalamma died. She died after disposal of RA No. 573/2011. Further the petitioners filed one more memo stating that death certificate of Smt.Deveeramma is not within their custody and also stated that there are no legal heirs to Smt.Deveeramma.

9. It is pertinent to note that, the 1st respondent herein has not challenged the judgment and decree passed in RA No.573/2011. In the objection statement the 1st respondent contended that the petitioners have not filed any regular appeal. But the 1st respondent also not challenged the

judgment and decree in RA No.573/2011. It is very important to mention that, the petitioners have maintained this application on the basis of the principles laid down by Hon'ble Supreme Court of India in the decision of Vineetha Sharma. At this juncture it is very much necessary to go through the principles laid down in the said decision which are as hereunder:

(2020) 9 SCC 1

Between: Vineeta Sharma V/s Rakesh Sharma

Wherein Hon'ble Supreme Court of India has held that,

Daughters right in coparcenary property under substituted Section 6 of Hindu Succession Act 1956. Daughters born before date of enforcement of the 2005 amendment Act. Held, has same rights as daughter born on or after the amendment. If daughter is alive on date of enforcement of Amendment Act 2005 i.e., 09.09.2005 she becomes a coparcenary with effect from date of Amendment Act ie., 09.09.2005 irrespective whether she was born before the amendment.

Once constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. Shares will therefore have to be determined in changed scenario. Severance of status cannot come in the way to give effect to statutory provision such as substituted Section 6 and changes by subsequent events.

Statutory fiction of partition (under unamended Section 6) was far short of actual partition. It was meant for a specific

purpose. It did not bring about actual partition or disruption of coparcenary. Also mere severance of status by way of filing a suit does not bring about partition. Till the date of final decree, change in law, and changes due to subsequent event can be taken into consideration. Thus, notwithstanding that a preliminary partition decree has been passed, daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

10. In this case also only preliminary decree has been passed. Till now the final decree has not been drawn. As such the petitioners are entitled for the benefit of change in law. Till now actual partition has not been effected. As such it is just and necessary to modify the preliminary decree. It is very important to note that, the petitioners and the respondents are the children of Devanaika. By applying principles laid down by Hon'ble Supreme Court of India in the decision reported in **(2020) 9 SCC 1** the petitioners as well as respondents are having $1/7^{\text{th}}$ share each in the suit schedule properties. Hence, it is necessary to draw one more preliminary decree. Accordingly, point No.1 is answered in the Affirmative.

11. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.I filed by the petitioners under Section 153 of CPC is hereby allowed.

It is held that, the petitioners herein i.e., defendant No.4 to 8 and respondents herein i.e., Defendants No.1 and 2 in OS No.60/2006 are having 1/7th share each in the suit schedule properties.

Office to draw one more preliminary decree as per above order in OS No.60/2006.

No order as to costs.

(Dictated to the Typist directly on the compute, then same is corrected and pronounced by me in the open court on this the 19th day of June, 2026.)

Sd/-

(Anitha)

Prl.Senior Civil Judge and JMFC.,
Hunsur.