

THE COURT OF ADDL. SENIOR CIVIL JUDGE
AT RAMANAGARA

:PRESENT:

Smt. K.Srividya, B.A.L., LL.M.,
Addl. Senior Civil Judge,
Ramanagara.

FDP No.38/2017

DATED : THIS THE 28th DAY OF MAY 2018

Petitioner : Smt. Rangamma, W/o.Revaiah, 53 years,
D/o. Byatamma & Hombaiah,
R/at Sheshagiri Halli, Bidadhi Hobli,
Ramanagara Taluk & District.

(By Sri.B.S.N., Advocate)

- V/s -

Defendants : 1. Hombaiah,
S/o.late Hombaiah, 63 years,

2. Anand.H,
S/o.Hombaiah, 42 years,

3. Kumar.H,
S/o.Hombaiah, 40 years,

4. Karehanumaiah,
S/o. Hombaiah, 36 years,
5. Byata Venkatappa,
S/o.Hombaiah, 58 yrs,
6. Manjunath.B,
S/o.Byata Venkatappa, 39 years,
7. Nagarathna.B,
S/o.Byata Venkatappa, 37 years,
8. Srinivas.B,
S/o.Byata Venkatappa, 34 years,
9. Thimmaiah,
S/o.late Hombaiah, 51 years,
10. Smt.Eramma,
W/o.Nagaraju, (Dead)
- 10(a) Nagaraju.D.C,
S/o.late Eramma, 50 years,
- 10(b) Smt.Manasa.D.C,
D/o.late Eramma, 28 years,
- 10(c) Smt.Roopa Sree.D.C,
D/o.Late Eranna, 26 years,

R1 to R10(a) to (c) are
R/at Manchanayskanahalli,
M.H.Post, Bidadi Hobli,
Ramanagara Taluk & District.

11. The Special Land Acquisition Officer,
Bangalore – Mysore Road,
National Highway, Basavanapura Village,
Ramanagara Taluk & District.

(R1 to R4 by Sri.N.S.S., Advocate)

(R5, R6 & R8 by Sri.T.P., Advo.)

(R7 – Ex-parte)

(R9 by Sri.L.V.S., Advo.)

**(R10 to R12 & R10(a) to (c) by
Sri.A.B., Advocate)**

* * * * *

Orders on I.A. dated 05.03.2018

I.A. is filed by the petitioner U/s.152 & 153 r/w Sec.151 of CPC to amend and rectify the boundaries of 'A' & 'B' schedule properties and measurement of 'B' schedule property in the preliminary decree passed in OS 54/06 on the file of this Court. It is accompanied by affidavit. Respondents No.5 to 7 have filed memo stating they have no objection to the said application. Respondents No.1 to 4 have jointly filed objection to the said application.

2. In the affidavit accompanying the application, the petitioner states that, they had filed suit in OS 54/06 for partition and separate possession seeking 1/ 5th share in suit schedule properties. The defendants were duly served summons. The judgment and decree was passed by the Hon'ble Court on merits granting 1/5th share to the petitioner in 'A' & 'B' schedule properties and dismissing claim in 'C' schedule property. The preliminary decree was passed on 16.08.2012.

Further state, the RTCs of 'A' & 'B' schedule properties and the other revenue documents still standing in the name of the mother of the petitioner late Smt.Byatamma. Further state, at the time of filing of the suit, due to oversight and typographical error the boundaries in 'A' & 'B' schedule properties were wrongly described and the measurement of 'B' schedule property was shown on higher side.

Further state, said mistakes came to the knowledge of the petitioner when the objections to the Section 54 application was filed by respondents No.1 to 4. Hence, it is necessary to amend the boundaries.

Further state, the total measurement of 'B' schedule property is 1 acre 3 guntas excluding 0.006 guntas the said portion was sold by their late mother. Further state, the petitioner's mother during her lifetime sold 1 ½ guntas to the petitioner and another 1½ guntas to her deceased sister and 0.03 guntas is a 'B' kharabportion attached to 'B' schedule property. Said properties are not available for division. Hence, 3 guntas kharab needs to be deleted in the schedule along with the portion of 3 guntas sold by the mother of the petitioner to the petitioner and respondent No.10. Hence, the said 3 guntas as per the sale deeds at Ex.P10 & Ex.P11 needs to be deleted from the total measurement of 'B' schedule property. Further state, after all the deductions the

measurement left in 'B' schedule property in Sy.No.2/19 is, 0.36.06.00 property. Hence, it is necessary to rectify the mistake in the boundaries and measurement in order to effect 1/5th share in 'B' schedule property.

Further state, there is no dispute among the parties that, the petitioner and the respondents No.1, 5, 9 and late Eramma, the respondent No.10 are entitled for 1/5th share in 'A' & 'B' schedule properties. Further state, this Court has ample jurisdiction and power to permit for amendment as sought in the application. Further contend, the proposed amendment is due to typographical error and mistake Hence, prays for allowing the application.

3. The respondent No.1 in the objection, apart from usual denial of the averments mentioned in the affidavit accompanying the application, the respondent No.1 submit that, under the present application the petitioner seek for amendment in the boundaries and extent in the preliminary

decree. However, under the FDP proceeding said amendment cannot be undertaken and that needs to be incorporated in the original plaint in OS 54/06. Further state, OS 54/06 was decreed without contest though written statement was filed.

Further state, the amendment sought by the petitioner had to be resorted to in the original plaint of the original suit. Hence, there is no ground for maintaining the application. Hence, prays for dismissing the application and to return the FDP proceeding by directing the petitioner to withdraw the same and to direct the petitioner to seek amendment in the original plaint OS 54/06 and further seek to vacate the interim order of temporary injunction passed against respondent No.1. Hence, prays for rejection of the application with cost.

4. The respondents No.5, 6, 8 & 9 filed memo they have no objection to the application. Other counsels for respondents have not filed any objection to the application.

5. The following points arise for my determination:

(1) *Whether the application filed U/s.152 & 153
r/w Sec.151 of CPC is to be allowed ?*

(3) *What order ?*

6. Heard the counsel for petitioner and counsel for respondents No.1 to 4.

7. My findings on the above points are as under:

Point No.1 : In the Affirmative

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

REASONS

8. Point No.1 : The counsel for the petitioner argued that, Section 152 & 153 of CPC are benevolent provisions. There is no dispute between the parties regarding alienation, identification of the properties and its measurement. Further submitted, FDP being continuation of original suit this Court has ample power to correct the boundaries so as to clear the ambiguity. The counsel for petitioner referred to following citations to support their contention.

- (1) *Civil Appeal No.8538/2011 (Ganduri Koteshwaramma and another -V/s- Chakiri Yanadi and another)*
- (2) *Hon'ble High Court of Karnataka in W.P. No.44710/12 (Smt.Janaki -V/s- Smt. Lalitha and others)*
- (3) *Hon'ble High Court of Karnataka in RSA No.634/16 (Smt.Chaularamma – V/s- Driver Nagaraju and others)*
- (4) *2008(1) AIR KAR R 109 (DB) (Niyamat Ali Molla -V/s- Sonargon Housing Co-operative Society Ltd., & others)*
- (5) *2008(3) KAR LJ 129 (DB) (Smt. Rukmani and others -V/s- V.Uday Kumar and others)*
- (6) *AIR 2009 SC 2141 (DB) (Peethani Suryanarayana and another -V/s- Repaka Venkata Ramana Kishore and others)*
- (7) *ILR 2018 KAR 219 (Sharanappa and others -V/s- The Managing Director, NEKRTC Sarige Sadan, Kalaburagi)*
- (8) *2017(3) KCCR 2045 (Ponnappa and others -V/s- Katalasaheb and others)*

9. Per contra, the counsel for respondents No.1 to 4 submitted that, any number of preliminary decree could be drawn. However, about the sale deeds there is no pleading in the plaint. Hence, the proposed amendment sought by the plaintiff cannot be allowed under the provision of Section 152

& 153 of CPC. By contending so, sought for return of F.D. petition. The counsel referred to following citations.

(1) AIR 2005 SC 3315 (DB) (ICICI Bank Ltd., and another -V/s- Municipal Corporation of Greater Bomnbay and others)

10. Perused the principles laid down by Hon'ble Karnataka High Court and Apex Court in above mentioned citations and perused the records.

11. the petitioners under the present application intend to correct the boundaries of 'A' & 'B' schedule in the preliminary decree in OS 54/06 and also intend to correct the extent in 'B' schedule property. The amendment sought is as follows:

(1) At schedule 'A' – the boundaries shown on North and South my be interchanged and rectify it as North by : Property belongs to Thammaiah and South by: Government Lake.

(2) At schedule 'B', the boundaries on West : the words property belongs to Thammaiah may be deleted and read as “property of Ramamurthy and Road thereafter, property of Thammaiah”. North the words property belongs to Ramamurthy, forest may be deleted and read as “property of Smt.Rangamma (petitioner) and late

Eramma (Respondent No.10) in Sy.No.2/19” and on South the property belongs to Rangamma and Eramma property Hogaeshwar may be deleted and read as “Government School and Gundu Thopu in Sy.No.2/3”.

2. Measurement sought to be corrected :

1. *At schedule -B, the measurement to extent 1 acre 3 guntas may be deleted and read as “measuring 0.36.06.00 guntas out of total 1 acre 3 guntas”.*

12. The 'A' & 'B' schedule under the preliminary decree is described as : **'A' - Schedule**

All that piece and parcel of Sy.No.2/16 B, situated at Manchanayakanahalli, M.H. Post, Bidadi Hobli, Ramanagara Taluk, Bangalore Rural District, to extent of 24 guntas bounded as :

*East by : Property belongs to Thammaiah
West by : Bangalore – Mysore Road
North by : Government Lake
South by : Property belongs to Thammaiah*

'B' schedule

All that piece and parcel of Sy.No.2/19, situated at Manchanayakanahalli, M.H.Post, Bidadi Hobli, Ramanagara Taluk, Bangalore Rural District, to extent of 1 acre 3 guntas bounded as :

*East by : Property belongs to Byrappa
West by : Property belongs to Thammaiah
North by : Property belongs to Ramamurthy, Forest
South by : Property belongs to Rangamma and Eramma property Hogaeshwar.*

13. Respondents No.5, 6, 8 & 9 as stated earlier have filed memo stating they have no objection in allowing the application. Respondent No.1 filed objection stating under the present FDP petition the preliminary decree cannot be amendment but, it has to be resorted to the original plaint in the original suit in OS 54/06.

14. A question arises whether the proposed amendment / correction of the preliminary decree can be allowed in the present FDP petition.

15. At this juncture, this Court would rely on the decision of **Apex Court in (2009) 9 SCC 689 (Shub Karan Bubna @ Shub Karan Prasad Bubna -V/s- Sita Saran Bubna and others)**, wherein it has been held that,

“in regard to estates assessed to payment of revenue to the government (agricultural land), the Court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in

accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with Section 54 of Code.

Where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division.

As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until partition, that is division by metes and bounds, takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.

16. Perused the principle laid down in above cited case. As per the principle laid down by Apex Court in above cited case,

so far as partition suits are concerned, preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until partition, that is division by metes and bounds takes place by passing a final decree. Hence, it implies FDP proceeding is a continuation of suit. Hence, there is no specific bar to make necessary correction in the preliminary decree. Based on said reasoning this Court views that, this Court has power to make necessary corrections in the preliminary decree provided it shall not affect the rights of the parties.

17. So far as correction sought by the petitioner with reference to changes in boundary of 'A' and 'B' schedule properties, firstly the respondents No.1 to 4 have not categorically objected or disputed to proposed correction in boundaries of 'A' and "B' schedule properties. Their only objection is that said correction has to be made in original suit in the plaint. As stated earlier, FDP being continuation of

suit, this Court views that, it has ample powers to make correction in the boundaries of 'A' and 'B' schedule properties.

18. Since, the parties to this petition have not objected to making corrections in the boundaries of 'A' & 'B' schedule properties this Court views that, said correction in the preliminary decree could be allowed.

19. So far as reducing the extent of 'B' schedule property is concerned, as per the copy of plaint and written statement averment and finding of this Court in judgment in OS 54/06, there is clear recital in said documents that in 'B' schedule property 1½ guntas each is sold by mother of petitioner Byatamma in favour of the petitioner and respondent No.10 Eramma and 6 guntas sold to one Ramamurthy. In the judgment in page 8 para 10 and page 9 there is a finding of this Court with reference to the said aspect. Hence, out of entire extent of 1 acre 3 guntas in 'B' schedule property above

said extent sold to petitioner, Eramma and Ramamurthy has to be deducted. Since, the petitioner contends 3 guntas is kharab said portion is also required to be deducted.

20. Respondent have not objected to reducing the extent in 'B' schedule property. On the other hand, the records reveals the respondents have deposited to the Court fee with respect to their shares in the petition properties. Hence, the proposed correction sought by the petitioner in the preliminary decree does not affect the rights of the parties. Based on said reasoning, the application filed seeking permission for correction of boundary in preliminary decree is to be allowed.

With this observation, **Point No.1 is answered in the Affirmative.**

21. Point No.2: Based on findings in point No.1, proceed to pass the following:

ORDER

I.A. dated 05.03.2018 filed by the petitioner U/.152 & 153 r/w Sec.151 of CPC is hereby allowed.

Office is directed to rectify the boundaries of 'A' & 'B' schedule properties and measurement of 'B' schedule property in preliminary decree in OS 54/06 as per the details described in the application.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by her, corrected, signed and then pronounced by me in the Open Court on this the 28th day of May 2018)

(K. SRIVIDYA)
Addl. Senior Civil Judge,
Ramanagara.

Order Pronounced in the open Court vide separate order:

ORDER

I.A. dated 05.03.2018 filed by the petitioner U/.152 & 153 r/w Sec.151 of CPC is hereby allowed.

Office is directed to rectify the boundaries of 'A' & 'B' schedule properties and measurement of 'B' schedule property in preliminary decree in OS 54/06 as per the details described in the application.

**Addl. Senior Civil Judge,
Ramanagara.**