

THE COURT OF ADDL. SENIOR CIVIL JUDGE
AT RAMANAGARA

:PRESENT:

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

FDP No.38/2017

DATED : THIS THE 12th DAY OF APRIL 2019

Petitioner : Smt.Rangamma
W/oRevaiah
D/o Byatamma & Hombaiah
Aged about 53 years
R/at Sheshagiri Halli
Bidadi Hobli
Ramanagara Taluk & District.

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

- V/s -

Defendants : 1. Hombaiah
S/o Late Hombaiah
Aged about 63 years

2. Anand.H,
S/o Hombaiah

Aged about 42 years

3. Kumar.H
S/o Hombaiah
Aged about 40 years
4. Karehanumaiah
S/o Hombaiah
Aged about 36 years
5. Byata Venkatappa
S/o Hombaiah
Aged about 58 years
6. Manjunath.B
S/o Byata Venkatappa
Aged about 39 years
7. Nagarathna.B
S/o Byata Venkatappa
Aged about 37 years
8. Srinivas.B
S/o Byata Venkatappa
Aged about 34 years
9. Thimmaiah
S/o Late Hombaiah
Aged about 51 years
10. Smt.Eramma
W/o Nagaraju
Since Dead
Rep by her LR's

- 10(a) Nagaraju.D.C
S/o Late Eramma
Aged about 50 years
- 10(b) Smt.Manasa.D.C
D/o Late Eramma
Aged about 28 years
- 10(c) Smt.Roopa Sree.D.C
D/o.Late Eranna
Aged about 26 years

Respondents No.1 to 10(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.

(R-1 to R-4 Rep by Sri.N.S.S., Advocate)
(R-5, 7 & 8 Rep by Sri.M.M., Advocate)
(R-6 Rep by Sri.T.P., Advocate)
(R-9 Rep by Sri.L.V.S., Advocate)
(R-10 to R12 & R10(a) to (c) Rep by
Sri.A.B., Advocate)

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Orders on I.A. dated:19-09-2018

I.A dated:19-09-2018 is filed by the petitioner U/s.6 Rule 17 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 FDP petition. It is accompanied by affidavit. The respondents No.5 to 9 have filed memo stating they have no objection to the said application. The respondents No.1 has filed objection to the said application. Memo is filed by the respondent No.1 to 3 adopting objection filed by the respondent No.1.

2. In the affidavit accompanying the application, the petitioner states that, she had filed suit in OS.54/2006 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 RTC's 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, 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 petition. However, under the FDP proceeding said amendment cannot be undertaken. Further state, similar application dated:05-03-2018 was filed by the petitioner seeking similar relief. Said application was opposed by the respondent. However, said application came to be allowed and said order dated:28-05-2018 of this Court is challenged before the Hon'ble High Court of Karnataka in WP No.26339/2018. During pendency of said WP, similar application is not maintainable.

Further state, present application is hit by Section 11 of CPC. Further state, intention of the petitioner is to drag on

the petition. By contending so, sought for dismissal of the application.

4. The following points arise for my determination:

(1) *Whether the application filed U/s.6 Rule 17 R/w Sec.151 of CPC is to be allowed ?*

(3) *What order ?*

5. Written argument filed by the petitioner and respondents No.1 and 6.

6. 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

7. **Point No.1** : Perused the written arguments and the case record. The petitioner under the present application intend to correct the boundaries of 'A' & 'B' schedule in the petition 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 may be interchanged and rectified 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".

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".

8. A question arises whether the proposed amendment/correction can be allowed in the present FDP petition.

9. 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.

10. 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 of schedules in the FDP petition. Based on said reasoning this Court views that, this Court has power to make necessary corrections in this petition provided it shall not affect the rights of the parties.

11. 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.

12. 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 petition schedule could be allowed.

13. So far as, reducing the extent of 'B' schedule property is concerned, as per order of this Court dated: 28-05-2018, the extent and boundaries in O.S.54/2006 was permitted to be amended. As against the order passed by this

Court on 28-05-2018, there is no stay of the proceeding. Further, only the extent of 'B' schedule property is sought to be reduced, which does not affect the rights of parties in the schedule property. Hence, the proposed amendment could be allowed. Further, this petition being continuation of O.S.54/2006, it is not hit by Section.11 of CPC., i.e., Principle of Resjudicata.

14. 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 petition schedule does not affect the rights of the parties. Based on said reasoning, the application filed seeking permission for correction of schedules in the petition is to be allowed. With this observation, **Point No.1 is answered in the Affirmative.**

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

ORDER

I.A. dated 19-09-2018 filed by the petitioner U/o 6 Rule 17 R/w Sec.151 of CPC is hereby allowed on cost of Rs.1,000/-.

For amendment of petition and amended petition.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 12th day of April 2019)

(SMT.K. SRIVIDYA)
Addl.Senior Civil Judge & JMFC.,
Ramanagara.