

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC., AT : CHANNAPATNA

BEFORE

Smt. SHUBHA

B.A.L. LL.B
Senior Civil Judge & JMFC, Channapatna,

Dated this the 28th day of July 2021

FDP NO. 10/2017

PETITIONER :

T.K.Vishalakshamma, D/o. Late
Chikkakempalakkaiah, Aged about 61
years, Thattekere Village, Channapatna
Town.

(By Sri.KTT, Adv.)

VERSUS.

RESPONDENTS :

1) K.T.Ramanna, S/o. Late
Chikkakempalakkaiah, Dead by his
LR's

1a. T.R.Shivakumar, S/o. Late
Ramanna, Aged about 49 years,

1b. T.R.Satish, S/o. Late Ramanna,
Aged about 36 years,

1c. T.R.Chandra Shekar, S/o. Late Ramanna, Police Department, Aged about 31 years, All are R/at Thattekere Village, Kasaba Hobli, Channapatna Taluk.

2) K.T.Lakshmana, S/o. Late Chikkakempalakkaiah, Dead by LR's.

2a. Smt.Kamalakshi, W/o. Late Lakshmana, Aged about 55 years,

2b. Thanuja D/o. Late Lakshmana, Aged about 29 years,

2c. Sheshgowda, S/o. Late Lakshmana, Aged about 25 years,

2a to 2c R/at No.136/b, 8th cross, Bapujinagara, Mysore Road, Bangalore.

3) Smt.Beeramma mentioned as Boramma, D/o. Late Chikkakempalakkaiah, Since dead by no LR's

4) Smt.Gowramma, D/o. Late Chikkakempalakkaiah, W/o. M.Thammaiah, Since dead by LR's

4a. T.Nagendra S/o. Late Gowramma, Aged about 47 years, Advocate, No.149A, 8th Cross, Bapujinagara, Mysore Road, Bangalore.

Gowramma had daughter she already on record as LR's of 2a.

**(R1(a to c), R2(a to c) – Exparte
R4(a)-Sri.CMK, Adv.)**

ORDER

The above petition is filed by the petitioner to draw a Final Decree in respect of 1/3rd share of the petitioner in respect of item Nos.1 to 4 of suit schedule properties and also seeking vacant possession of 1/3rd share of the petitioner.

2. In this case, earlier notice was issued to all the respondents by this court. But none of the respondents, except respondent No.4(a), have appeared before this court. The respondent No.4(a) even though appeared through his counsel, but not filed any objection to the main petition till filing of Court Commissioners Report. Therefore, the learned advocate for the petitioner has filed application seeking appointment of Court Commissioners to demarcate the share of the petitioner in respect of the suit schedule properties. The respondent No.4(a) has not even filed objection to the above Commission application also. Therefore, the said application was allowed by this court and Court Commissioners were appointed to measure the suit schedule properties and to demarcate the share of the petitioner. The Court Commissioners after surveying the suit schedule properties filed Commissioner Reports by identifying the share that can be

allotted to the petitioner in respect of the suit schedule properties. After filing of the said Report by the Court Commissioners, the learned Advocate for the respondent No.4(a) has filed serious objection to the said Reports and contended that as per the judgment dated 28.07.2006 in OS No.140/2004, the petitioner is not entitled to 1/3rd share in the suit schedule properties. But in fact, she is entitle for 1/4th share in the suit schedule properties and 1/5th notional share of the father. Hence, prayed to direct the Court Commissioners to effect the partition of the suit schedule properties.

3. In the meanwhile, the learned Advocate for the petitioner has filed application u/O 6 Rule 17 r/w Sec.151 of CPC seeking permission of this court to permit him to amend the petition. However, the learned Advocate for the petitioner has again filed Memo on 01.06.2020 for having withdrawn the IA.4. Thereafter, the learned Advocate for the petitioner has filed Memo along with certified copy of the order passed in OS No.140/2004 dated 18.02.2020. However, no order is passed in respect of IA.4.

4. I have heard the arguments of both counsels on IA.4, on main petition and also on the Commissioner Reports filed by the Court Commissioners. When the case was posted for passing orders on the above main petition and the application, the learned Advocate for the respondent No.4(a) has again advanced this case and filed IA.9 u/s 152 of CPC praying this court to amend the preliminary decree in OS No.140/2004 in accordance with the judgment. The learned Advocate for the petitioner has filed objections to the above application.

5. In this case, the perusal of page No.8 of the judgment in OS No.140/2004 shows that the court wanted to grant 1/4th share and 1/5th share in the Notional share of the father of the petitioner. However, in the operative para, the specific share allotted to the petitioner was not mentioned. The said judgment and decree passed by the court in OS No.140/2004 was not at all challenged by any of the parties to the suit. The ordersheet dated 18.02.2020 shows that the request made by the present petitioner to correct the judgment and decree was not considered by the said court which passed the decree. Therefore, the IA.4 filed by the

petitioner was withdrawn by her. Hence, in view of the said memo, IA.4 is deserves to be dismissed.

6. In this case, when once the prayer made by the petitioner to amend the decree was not at all considered by the court which passed the decree, then again respondent No.4(a) cannot file such kind of application for the second time. Therefore, IA.9 is also deserves to be dismissed.

7. Moreover, as rightly pointed out by the learned Advocate for the petitioner, question of amending the preliminary decree does not arise as per Order 20 Rule 12 and 18 of CPC in this final decree proceedings. The said application requesting the court to amend the decree was not at all considered by the court which passed the decree in OS No.140/2004. However, by going through the entire records and recent law laid down by the Hon'ble Supreme Court of India, it is well settled in view of the judgment in **Vineeta Sharma vs. Rakesh Sharma and others in Civil Appeal No.32601/2018 dated 11.08.2020** that "Before passing of the final decree if there has been enlargement or diminution of the shares of the parties or their rights have been altered by statutory amendment, the court is duty bound to

decide the matter and pass final decree keeping in view of the changed scenario". In this case also, there is a diminution of the shares in view of death of one of the share holder i.e., Beeramma @ Boramma, who died without leaving any Legal Heirs. In view of the death of said Beeramma @ Boramma, now the decree schedule properties shall be divided between petitioner and respondent Nos.1(a) to (c), respondent No.2(a) to (c) and respondent No.4(a). Since no final decree is passed by this court in respect of the suit schedule properties, in view of the above decision of Hon'ble Supreme Court, the petitioner, deceased Beeramma @ Boramma, deceased Gowramma are entitle for equal share as a coparcenar along with their brothers i.e., K.T.Ramanna and K.T.Lakshmana. However, the said Beeramma @ Boramma is no more now. Since the above K.T.Ramanna, K.T.Lakshmana, Smt.Beeramma @ Boramma and Smt.Gowramma have died during the pendency of these proceedings, their legal heirs are entitle for their respective shares. ***Final Decree Proceedings is a continuation of suit. Therefore under changed circumstances, the court can pass a final decree considering the alteration of shares due to death of any of the coparceners. There is no strict rule in***

partition suits that whatever is allotted in the preliminary decree shall be allotted in the final decree also. Therefore, now the suit schedule properties shall be divided into 4 equal shares. The petitioner is entitle for 1/4th share in the decree schedule properties. The respondent No.1(a) to (c) are together entitle for 1/4th share of their deceased father K.T.Ramanna. The respondent No.2(a) to (c) are together entitle for 1/4th share of their deceased father K.T.Lakshmana. Since another daughter of propositus i.e., Beeramma @ Boramma died without leaving any legal heirs, her share will devolve upon the remaining children of Chikkakempalakkaiah. The respondent No.4(a) is entitle for 1/4th share of his deceased mother Gowramma. However, the Court Commissioner has filed a report demarcating the 1/3rd share of the petitioner. Therefore, the above Commission Reports have to be returned to the Court Commissioners with a direction to file fresh reports demarcating 1/4th share of the petitioner.

8. With regard to relief of amendment to the preliminary decree as sought by the respondent No.4(a) is concerned, such a relief is not at all maintainable in law. There is no question of amending the preliminary decree in this case since there is no clerical

mistake. But due to changed circumstances, the share will be altered and in view of the death of said Beeramma @ Boramma, all the children of said Chikkakempalakkaiah are entitle for equal share.

9. In this case, the respondent No.4(a) has contended in the above application that since the share of defendants is not stated in the preliminary decree, the said decree is of no help. But it is pertinent to note here that in a partition suit, the share of the plaintiff will be declared by the court since the plaintiff approaches the court by paying necessary court fee. If the defendants want to make use of such a decree, they can file any number of final decree petitions. There is no bar to file separate final decree petition even by the defendants. Hence, such a contention is not at all maintainable. Since the Court Commissioners Reports are in respect of 1/3rd share, final order cannot be passed at this stage. After receiving a fresh reports, final order on merits will be passed by this court. However, it is made very clear that both the parties are hereby strictly directed to co-operate with the Court Commissioners so that they can file report within the stipulated period. Since the petitioner is old

aged lady, the Court Commissioners are hereby directed to file their fresh reports on the next date of hearing without fail. Hence, I pass the following:

ORDER

In view of not press memo filed by the petitioner counsel dated 20.07.2020, IA.4 filed by the petitioner u/O 6 Rule 17 r/w Sec.151 of CPC is dismissed.

IA.9 dated 15.07.2021 filed by the respondent No.4(a) u/s 152 CPC r/w Sec.151 of CPC is dismissed.

However, in view of the observation made herein above, the petitioner is entitle for 1/4th share in the decree schedule properties. Therefore, the Court Commissioners are directed to demarcate the 1/4th share of the petitioner by revisiting the suit schedule properties by giving notice to both the parties to the petition and to file a fresh report on the next date of hearing without fail.

Office is directed to reissue the Commission Warrant with a direction to the Court Commissioners to file their fresh report

keeping note of all the above observations
made by this court.

(Dictated to the Stenographer directly on computer, then corrected, initialed and pronounced by me, in the open court, on this the **28th day of July 2021**).

(Shubha)
Sr. Civil Judge & JMFC,
Channapatna.