

ORDER ON MEMO DATED 03.03.2023

The Petitioner has filed a Memo and submitted that they have filed a suit before this court in O.S.No.116/2012 against the Respondents for partition and separate possession of their share in the suit schedule properties and this court has pleased to decree the suit on 03.05.2014, holding that the Petitioner Nos.1 to 3 are entitled for 1/15th share each in all the suit schedule properties except item No.19 of the suit schedule properties and Respondent Nos.1 and 2 are entitled for 1/3rd and 1/15th share each in all the suit schedule properties except item No.19 of the suit schedule properties. That in view of the law laid down by Hon'ble Supreme Court of India in Vineetha Sharma vs. Rakesh Sharma and Others, the Petitioners are entitled to 1/5th share each in all the suit schedule properties except Item No.19 of the suit schedule properties. Hence, prayed to alter the Petitioners share.

2. On the other hand the 2nd Respondent has filed objection to the Memo and he has submitted that the Memo is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The the Petitioner has virtually denied the fruits of the decree granted by this court. That the final decree proceedings only binding side judgment and decree and execute only side judgment and decree. That the Petitioners claim any amendment of judgment and decree, they have to file application in original suit for the same. That the said Memo is bared by law. That the Vineetha Sharma judgment is not applicable to this case. That if the Memo is allowed, the great deal of hardship would be cause to the 2nd Respondent. Hence, the 2nd Respondent has prayed for dismissal of the said memo.

3. Perused the memo and objections.

4. I have heard the arguments of learned advocate for both the parties.

5. In this case, the Petitioner No.1 to 3 are the children of Ningegowda and Mayamma and this court considering the prevailing law as on the date of passing of the judgment,

allotted 1/15th share each to Petitioner Nos.1 to 3. But in view of the judgment of Hon'ble Supreme Court of India in **Vineetha Sharma vs. Rakesh Sharma** and Others case, reported in **KLJ - 2020(5) - Page 1** the Petitioners are entitled for 1/5th share each in all the suit schedule properties except Item No.19 of the suit schedule properties. Therefore, the decree has to be altered. Hence, I pass the following:

ORDER

Memo filed on behalf of the Petitioners is hereby allowed.

The office is hereby directed to alter the decree stating that the Petitioners Nos.1 to 3 are entitled for 1/5th share in all the suit schedule properties except Item No.19 of the suit schedule properties.

(SHUBHA)
**Senior Civil Judge & JMFC,
Channapatna.dt.07.02.2024**