



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C., AT CHANNAPATNA.**

: PRESENT :

SMT.SHUBHA, B.A.L., L.L.B.,
Senior Civil Judge & JMFC.,
Channapatna.

DATED THIS THE 02nd DAY OF DECEMBER 2023

F.D.P.No.04/2019

PETITIONER:

Smt.Manjula

(By Sri.B.V.R., Advocate)

V/S

DEFENDANTS:

Smt.K.R.Thara and Others.

**(Respondent Nos.1 & 2
are absent, Respondent
No.4 is represented by
Sri.J.P., Advocate,
Respondent Nos. 5, 6, 7, 9
to 13 are exparte and
Respondent Nos.3 and 8
are absent)**

IN I.A.NO.II

APPLICANT/PETITIONER:

Smt.Manjula



V/S

OPPONENTS/RESPONDENTS:

Smt.K.R.Thara and Others.

ORDERS ON I.A. No.II

The above application i.e., I.A.No.II is filed on behalf of the Petitioner under Section 151 of Civil Procedure Code to ignore the preliminary decree passed by the Hon'ble III Addl. District and Sessions Judge at Ramanagara in R.A.No.41/2014, due to the changed circumstances in law declared by Hon'ble Apex Court reported in **(2020) 9 – S.C.C. - 1, Vineeta Sharma vs. Rakesh Sharma,** overruling the ratio of judgment passed in Prakash and Ors vs. Phulavathi and Ors., and pleased to draw final decree as passed by this Court in O.S.No.08/2012 dated 16.01.2013, in the interest of justice and equity.

2. The above application is supported with the affidavit of the Petitioner, wherein she has submitted that she has filed original suit in O.S.No.08/2012 against the Respondents for the



relief of partition and separate possession and the court has decreed the suit on 16.01.2023. That aggrieved by the judgment and decree, the 4th Respondent has preferred appeal before the Hon'ble III Addl. District and Sessions Judge, Ramanagara in R.A.No.41/2014, in which the court has modified the judgment and decree passed by this court vide judgment and decree dated 04.08.2018, following the ratio laid down by the Hon'ble Apex Court passed in Prakash & Ors. vs. Phulavathi & Ors., wherein my father died on 14.03.1992 as such she is not entitled for equal share, by virtue of amendment introduced to Section 6 of Hindu Succession Act. That therefore, she and other daughters of Eregowda @ Biligowda are entitled for notional share in the half share of Eregowda @ Biligowda.

3. She has further submitted that it is trite law laid down by Hon'ble Apex Court that especially in partition suit, Order 20 Rule 18 of Civil Procedure Code creates no legal impediment for more than one decree if after passing of preliminary decree events have taken place necessitating readjustment of



shares as declared in preliminary decree, modification in preliminary decree by trial court permissible, same is applicable to my case, due to latest judgment passed by the Hon'ble Apex Court reported in **(2020) 9 – S.C.C. - 1, Vineeta Sharma vs. Rakesh Sharma**, overruling the ratio of judgment passed in Prakash and Ors vs. Phulavathi and Ors., it is held that irrespective of death of propositor i.e., father, daughters have been conferred with right in coparcenary properties by birth and are equally entitled to have the share as that of son, death of father cannot deprive the right conferred upon them, as such amended provision of law applicable to all living daughters by birth not on death of propositor, the law followed by appellate court in R.A.No.41/2014, has not application as such judgment and decree passed therein vitiates by virtue of ratio laid down in afore stated judgment.

4. She has further submitted that, with due regard to the directive ratio of ruling passed by Hon'ble Apex Court reported in **(2011) 9 – S.C.C. - 788**, wherein it is settled that, having regard to



changed or supervening circumstances, preliminary decree, held, can be modified before passing of final decree even if no appeal preferred against preliminary decree, same principles of law is applicable to this petition, her share has to be augmented following the latest judgment of Hon'ble Apex Court as stated supra.

5. She has further submitted that as per the above decision, ignore the preliminary decree passed by the Hon'ble III Addl. District and Sessions Judge at Ramanagara in R.A.No.41/2014 and restore the decree passed by this court in O.S.No.08/2012 dated 16.01.2013 and pass final decree therewith and be pleased to partition the petition schedule properties instead of 1/16th share by dividing 1/8th share as decreed by this court and put her in separate possession. That if this application is allowed no hardship or injustice would be caused to the Respondents. That if the application is not allowed a great hardship and injustice would be caused to her which cannot be compensated in any means. Hence, she prays to allow the above application.



6. The Respondents have not filed objections to the above application.

7. I have heard the arguments of learned advocate for the Petitioner and Respondent No.4 counsel has not addressed arguments on on I.A. No.II. Now the points that arise for my consideration are:

POINTS

1) Whether the Petitioner has made out a grounds to allow the above application ?

2) What order ?

8. My findings to the above points are as follows:-

Point No.1 : In the Affirmative

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

REASONS

9. **POINT NO.1 :-** The above application i.e., I.A.No.II is filed on behalf of the Petitioner under Section 151 of Civil Procedure Code to ignore the preliminary decree passed by the Hon'ble III Addl. District and Sessions Judge at Ramanagara in



R.A.No.41/2014, due to the changed circumstances in law declared by Hon'ble Apex Court reported in (2020) 9 – S.C.C. - 1, Vineeta Sharma vs. Rakesh Sharma, overruling the ratio of judgment passed in Prakash and Ors vs. Phulavathi and Ors., and pleased to draw final decree as passed by this Court in O.S.No.08/2012 dated 16.01.2013, in the interest of justice and equity.

10. The Petitioner counsel in support of his contention, relied on the decision reported in **(2011) 9 – S.C.C. - 788 (Ganduri Koteshwaramma and Another vs. Chakiri Yanadi and Another)**, wherein it is held that:

"A. Hindu Succession Act, 1956 – S.6 – Coparcenary property – partition by decree of court – Modification of preliminary decree to include shares of daughter as per S.6 amended in 2005 granting daughters share in coparcenary property – Scope and validity – Considering: (a) scope of amended S.6 (as amended), and (b) that Or.20 R. 18 CPC creates no impediment for more than one preliminary decree if after passing of preliminary decree events have taken place necessitating readjustment of shares as declared in preliminary



decree, modification in preliminary decree by trial court upheld – Hindu Succession (Amendment) Act, 2005, S.3 (amending S.6, original Act)

B. Civil Procedure Code, 1908 – Or.20 R. 18 and Ss.151 to 153 – Partition Suit – Modification of preliminary decree or more than one preliminary decree prior to passing of final decree – Reiterated, permissible – Furthermore, having regard to changed or supervening circumstances, preliminary decree, held, can be modified before passing of final decree even if no appeal preferred against preliminary decree.”

11. I have perused the above decision. The said decision is clearly applicable to this case. When the Hon'ble III Addl. District and Sessions Judge, Ramanagara decided the said R.A.No.31/2014, the rights of female Hindu in coparcenary property was decided on the basis of the decision of Hon'ble High Court of Karnataka in Prakash and Others vs. Pulavathi and Others. But subsequently, the said judgment is over ruled by the Hon'ble Supreme Court in Vineetha Sharma vs. Rakesh Sharma reported in **(2020) 9 – S.C.C. - 1**. Therefore, in view of the subsequent developments, modification



of decree of Hon'ble III Addl. District and Sessions Judge, Ramanagara is very much necessary.

12. The Hon'ble III Addl. District and Sessions Judge, Ramanagara modified the decree passed by the Trial Court and held that the Defendant Nos.5 to 13 are entitled for $1/16^{\text{th}}$ share each in the suit schedule properties. But in view of the decision of Hon'ble Supreme Court in Vineetha Sharma Case, the daughters are entitled for equal share. Hence, the final decree has to be passed as per the Preliminary Decree in O.S.No.08/2012 dated 16.01.2023. Hence, there are grounds to allow the above application. Therefore, I have answered above **Point in the Affirmative.**

13. **POINT NO.2:-** In view of my findings given on Point No.1 and for the reasons discussed herein above paragraphs, I proceed to pass the following:-



ORDER

The I.A. No.II is filed on behalf of the Petitioner under Section 151 of Civil Procedure Code is hereby allowed.

In view of the same, the Petitioner is entitled for 1/8th share in the suit schedule property. Therefore, the Court Commissioner has to be directed to demarcate the 1/8th share of the Petitioner.

Issue Commissioner Warrant to Taluk Surveyor and PWD Engineer if the Commission of Rs.2,000/- each is deposited.

(Dictated to the Typist Copyist on computer, then corrected, initialed and pronounced by me in the open court on this the **02nd day of December 2023**)

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