



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC AT
GUBBI

Dated this the 22nd day of June 2026

:: PRESENT::

KIRAN S.P., B.B.M., LL.B.,
Prl. Civil Judge and JMFC, Gubbi

FDP 22/2015

Petitioner:- G.T.Satyanarayana
S/O Late,Thimmaiah, 78 years,
R/O Eedigara Colony,
Arasikere Hassan District.

(By Sri.K.M.S, Advocate)

V/s.

Respondents:- 1.Krishnappa
S/O Late, Govindaiah
80 years, R/O B.K.Halli,
Nagalamadike hobli,
Pavagada taluk, Tumkur District.

2.Nagamma
W/O Late. Venkatachalapathi,
56 years, R/O Bukkapatana.
Penugonda taluk, Ananthpura District,
Andrapradesh,



3.Venkataramaiah
S/O Thimmaah, 91 years,
Anepete, Gubbi town, Gubbi taluk.

4.Channakeshava, 51 years,

5.B.R.Panduranga, 49 years,

6.B.R.Shivanna, 47 years,

7.B.R.Thimmanna, 45 Years,

8.B.R Govindaiah, 44 years,

9.Anjanamma dead,
Respondent no.4 to 8 are sons
Of Venkataramaiah R/O Anepete,
Gubbi town, Gubbi taluk.

10.Gangappa dead by Lrs:-
a).Jayamma (Councilor)
W/O Late, Gangappa, 50 years,

b).Sujatha
W/O Seenappa, 35 years,

both are R/O Adepete, Nelamangala,
Bangalore Rural District.

11.G.T.Nagendrappa dead by Lrs:-
a).Alumelamma W/O Late, G.T.Nagendrappa



50 years, Flower merchant, Behind Govt.,
Hospital,Pavagada taluk, Tumkur District.,

12.M.Veeraswamy Gowda
S/O Muddegowda,
68 years, No.519, 2nd main Road,
Nagendra Block, Srinagara, Bangalore.

**(R1 to 8 are exparte)
(R9 dead)**

**(R10(a) and (b) by Sri. H.LS. Advocate)
(Respondent No.12 by Sri.C.R.B. Advocate)**

:ORDER :

This final decree proceeding is initiated by the petitioner/plaintiff in pursuance of preliminary decree passed by the Learned Senior Civil Judge, Gubbi in RA No.5/2010. As per the order of that court plaintiff was entitled for 1/5th share in the suit schedule property. Therefore the petitioner has filed the present petition for seeking final decree proceedings for the allotment of his share.

02. After presentation of this petition, notices were issued to respondents. Thereafter, respondent No.12 has appeared before



the court through his counsel and filed IA No.4 U/o 1 R 10 R/w order 21 R 58 of CPC. IA No.4 was came to be allowed as per order dated: 23.10.2020 and he was brought on record as respondent No.12. Thereafter, respondent No.12 has filed his objections to main petition. It is the contention of the respondent No.12 that the petitioner/plaintiff had filed the above suit in O.S.No. 69/2003 on the files of this Hon'ble Court against the defendants including Venkataramaiah and others for partition and separate possession on 13-03-2003. In that suit Gangappa S/o Rangappa who had purchased the suit schedule properties was the 13th defendant. The said suit was dismissed on 23-11-2009. Against the order of the dismissal of the said suit the petitioner/ plaintiff had preferred appeal in R.A. No.05/2010 on the files of the Hon'ble Senior Civil Judge at Gubbi. In the said appeal the 13th defendant Gangappa was shown as 10th respondent. In the said appeal no notice was served upon on the 10th respondent namely Gangappa. In the absence of the said respondent the proceedings of the said appeal was further proceeded and the said appeal was allowed on 21-07-2015. As the judgment and decree in the said appeal was passed in the absence of the 10th respondent the same is not binding on the 10th respondent namely Gangappa. As



such the dismissal of the suit in O.S. No.69/2003 against the 13th defendant / 10th respondent was not set-aside and the said dismissal order of the suit has become final. Subsequent to dismissal of the suit in O.S. No.69/2003 on 23-11-2009 the legal heirs of the 13th defendant namely Gangappa had sold the suit schedule property on 09-09-2014 to Renukaradhya the vendor of this 12th respondent. The said Renukaradhya sold 4 acres 12 guntas of land in the suit schedule properties to the 12th respondent on 16.09.2016. Subsequent to the alienations of 4 acres 12 guntas of land out of the suit schedule properties in favour of Renukaradhya the judgment and decree in R.A. No. 05/2010 was passed by the Hon'ble appellate court. From the facts pleaded above it is crystal clear there was no judgment and decree against Gangappa with respect to the suit schedule property. As such the above said Final Decree Proceedings initiated by the petitioner against the legal heirs of 10th respondent namely Gangappa and this respondent is not maintainable. Further the schedule property is not liable for partition. Hence, he prays to dismiss the application.



03. The respondent No.12 has been examined as Rw.1 and got marked as many as 10 documents as Ex.R.1 to Ex.R.10 and closed his side of evidence.

04. Heard both sides.

05. the following points have been arisen for consideration.

Point No.1: ***Whether the petition filed by the petitioner is maintainable ?***

Point No.2: ***What Order?***

06. The findings on the above points are as follows;

Point No.1: In the Negative

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

R E A S O N S

07. Point No.1: It is pertinent note here that the petitioner/Plaintiff has filed the suit against the defendant No.1 to 14 in OS No.69/2003 before this court for relief of Partition and separate possession over the suit schedule property. It is noticed



that, said suit was came to be dismissed as per order dated: 23.11.2009. Aggrieved by the said judgment and decree passed by this court in OS No.69/2003, the plaintiff/Petitioner has preferred Regular appeal against the respondent No.1 to 11 in RA No.5/2010 on the file of Learned Senior Civil Judge at Gubbi. It is noticed that, said appeal was came to be allowed as per order dated: 21.07.2015, consequently, judgment and decree passed on 23.11.2009 in OS No.69/2003 by this court was set aside and Learned Senior Civil Judge decreed that the plaintiff/Petitioner is entitled for 1/5th share in the suit schedule property by metes and bounds. Thereafter, the petitioner has filed this petition to draw the final decree as per judgment and decree of Learned Senior Civil Judge in RA No.5/2010.

08. The respondent No.12 has filed the objection and contending that the petitioner/plaintiff had filed the above suit in O.S.No. 69/2003 on the files of this Hon'ble Court against the defendants including Venkataramaiah and others for partition and separate possession on 13-03-2003. In that suit Gangappa S/o Rangappa who had purchased the suit schedule properties was the 13th defendant. The said suit was dismissed on 23-11-2009. Against the order of the dismissal of the said suit the petitioner/



plaintiff had preferred appeal in R.A. No. 05/2010 on the files of the Hon'ble Senior Civil Judge at Gubbi. In the said appeal the 13th defendant Gangappa was shown as 10th respondent. In the said appeal no notice was served upon on the 10th respondent namely Gangappa. In the absence of the said respondent the proceedings of the said appeal was further proceeded and the said appeal was allowed on 21-07-2015. As the judgment and decree in the said appeal was passed in the absence of the 10th respondent the same is not binding on the 10th respondent namely Gangappa. As such the dismissal of the suit in O.S. No.69/2003 against the 13th defendant / 10th respondent was not set-aside and the said dismissal order of the suit has become final. Subsequent to dismissal of the suit in O.S. No.69/2003 on 23-11-2009 the legal heirs of the 13th defendant namely Gangappa had sold the suit schedule property on 09-09-2014 to Renukaradhya the vendor of this 12th respondent. The said Renukaradhya sold 4 acres 12 guntas of land in the suit schedule properties to the 12th respondent on 16.09.2016. Subsequent to the alienations of 4 acres 12 guntas of land out of the suit schedule properties in favour of Renukaradhya the judgment and decree in R.A. No. 05/2010 was passed by the Hon'ble appellate court. From the facts



pleaded above it is crystal clear there was no judgment and decree against Gangappa with respect to the suit schedule property. As such the above said Final Decree Proceedings initiated by the petitioner against the legal heirs of 10th respondent namely Gangappa and this respondent is not maintainable. Further the schedule property is not liable for partition. On these grounds he prays to dismiss the application.

09. It is noticed that, respondent No.10 who is the defendant No.13 in OS No.69/2003 was demised during the pendency of RA No.5/2010. On perusal of certified copy of order sheet of RA No.5/2010 reveals that the death of respondent No.10 Gangappa was reported in RA No.5/2010 as per order dated: 08.03.2010. It is noticed that the petitioner has failed to take steps against the Legal representative of deceased respondent No.10. Thereafter, he has obtained the decree against the death person. As already stated above suit of the plaintiff in OS No.69/2003 was came to be dismissed on 23.11.2009, after dismissal of the suit the Lrs of deceased respondent No.10 have executed sale deed with respect to suit schedule property in favour of one Renukaradhya as per Registered sale deed dated; 09.09.2014 which is marked as Ex.R.5. The decree was obtained by the petitioner on 21.07.2015



against the death person. Hence, the respondent No.12 contended that decree obtained by the petitioner is not executable decree. It is noticed that aforesaid Renukaradhya has executed sale deed in favour of respondent No.12 through Registered sale deed dated 16.09.2016.

10. The respondent No.12 has relied on decision of the Hon'ble High court of Karnataka which is reported in ILR 2001 KAR 5156 wherein, Hon'ble High Court of Karnataka held that where abatement takes place on the death of a party in first appellate court during the pendency of the first appeal, the judgment rendered without knowing the abatement, is a nullity.

11. It is relevant to apply the aforesaid ratio to the case on hand. In the present petition also the vendor of the vendor of respondent No.12 are the legal representatives of the deceased Gangappa who is the respondent No.10 in RA No.5/2010 and plaintiff No.13 in OS No.69/2003. Eventhough the death of the respondent No.10 was reported in RA No.5/2010, the petitioner in RA have failed to brought the Legal representatives of deceased respondent No.10. By applying the ratio of aforesaid decision of the Hon'ble High Court of Karnataka it is sufficient to come to the



conclusion that the abatement take place on the death of a respondent No.10 in appellate court in RA No.5/2010 during the pendency of the said appeal, the judgment rendered without knowing the abatement, is a nullity. Hence, the petition filed by the petitioner is not maintainable and there is no executable decree in the present case on hand. Accordingly, point No.1 is answered in the Negative.

12. Point No.2: For the foregoing reasons, this court proceeds to pass the following:

ORDER

**The petition filed by the petitioner is
not maintainable.**

Case is disposed off accordingly.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open Court on this the 22nd day of June 2026)

**(KIRAN S.P)
Prl. Civil Judge & JMFC,**

KATK310016932015

12

F.D.P.No.22/2015



Gubbi