



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT MADHUGIRI**

Dated this the 9th day of August 2023

Present :

SRI RAGHUNATHA GOWDA K.T. *B. Com., L.L.B.*
Prl. Civil Judge & JMFC,
Madhugiri.

FDP. No.4/2015

Petitioner : Sri. Sanjeevarayappa S/o Lingaiah,
Aged about 55 years,
R/at Chikkadalavatta Village,
I.D.Halli Hobli, Madhugiri Taluk.

(By Sri H.K.V., Advocate)

V/s

Respondents :

- 1 Sri. Lingaiah S/o Sanjeevaiah,
Aged about 70 years,
Since dead by LR's
- a) Smt. Siddamma W/o Lingaiah,
Since dead by LR's b to f
- b) Sri Mallappa S/o Linaiah,
since dead by LR's shown as
a & b of respondent No.2
- c) Sri. C.L.Siddappa S/o Lingaiah,
Aged about 60 years.
- d) Sri. Sanjeevarayappa S/o Lingaiah,
Aged about 55 years (plaintiff)



LRs of a to d are R/at
Chikkadalavatta Village,
I.D.Halli Hobli, Madhugiri Taluk.

- e) Smt. Nanjamma W/o Siddappa,
Aged about 62 years.
R/at Kalenahalli Village,
Kodigenahalli Hobli, Madhugiri Taluk.
- f) Smt. Ashwathakka W/o Narayanappa,
Aged about 57 years,
R/at Bachenahalli Village,
Kodigenahalli Hobli, Madhugiri Taluk.
- 2 Sri. Mallappa S/o Lingappa,
Since dead by LR.
- a) Smt. Hanumakka W/o Late Mallaiah,
Since dead by LR (b) only
LR of 2nd defendant LR (a)
- b) Sri. Anandaiah S/o late Mallaiah,
Aged about 64 years,
Both are R/at Chikkadalavatta Village,
I.D.Halli Hobli, Madhugiri Taluk.
- 3 Sri. Anjinappa,
S/o Peddakkagari Sanjeevappa,
Since dead by LR
- a) Smt. Lakshamma,
W/o late Anjinappa,
Aged about 48 years.
- b) Smt. Ashwathamma
W/o late Sanjeevaraya,
D/o late Anjinappa,
Aged about 38 years.



- c) Nandini D/o late Anjinappa,
Aged about 15 years.
- d) Sri. Kumaraswamy S/o late Anjinappa,
Aged about 18 years.
- e) Sri. Girish S/o late Anjinappa,
Aged about 7 years.

LR of 3(c) & 3(e) are minors
represented by their mother
next friend Lakshamma
W/o late Anjinappa,
LR of 3(a) to 3(e) are R/at
Obalapura Village,
I.D.Halli Hobli, Madhugiri Taluk.

- f) Smt. Sunandamma,
W/o Aswathappa,
aged about 30 years,
Nor R/at Obalapura Village,
I.D.Halli Hobli, Madhugiri Taluk.
Since dead by LRs
- a) Sri. Ashwathappa S/o Anjinappa,
Aged about 45 yers,
R/at Yarammanahalli Villagge,
Kodigenahalli Hobli, Madhugiri Taluk.
- b) Sri. Nandeesh S/o Ashwathappa,
Aged about 5 year.
Since minor represented by
his grandmother next friend
Lakshamma W/o Anjinappa
(L.R. a) 3rd defendant)



- g) Sriramaiah S/o Sajjappa,
& Lakshamma,
Aged about 47 years.
- h) Shylaja D/o Narasimhamurthy,
Aged about 22 years.
- i) Pradeep S/o Sriramaiah,
Aged about 19 years.
LRs (g) to (i) are R/at
Obalapura Village,
I.D.Halli Hobli, Madhugiri Taluk.

(By Sri B.H.P., Advocate)

**ORDERS ON COMMISSIONER REPORT WITH REGARD TO HOUSE
PROPERTY (ITEM NO.12)**

This court appointed the advocate as a court commissioner to conduct the commissioner work and demarcate the item No.12 of the suit property. After that the advocate commissioner conducted the commissioner work and submit the report.

2. The learned counsel for petitioner submits that he has no objection to accept the commissioner report.

3. Per contra the learned counsel for respondents filed objections to commissioner report contended that the commissioner not explain the vacant space with regard to item No.12 of the suit property and he has demarcet the house property into the feet and this court has not directed to demarcet in feet. And the commissioner submit his report stated that in Southern side of the suit property is



encroached by Anandaiah but he has not mentioned the measurement of property belongs to Anandaiah and the commissioner colluded with petitioner to prepare the report and he has not consider the sale deed dated:16-04-1999 and 23-11-2001 and without verifying the documents the commissioner conducted the commissioner work and report submit by the commissioner in favour of petitioner. Hence he prays to reject the commissioner report.

4. Heard and perused the entire materials available on record, the following points would arise for my consideration.

1. Whether the commissioner conducted the commission work in accordance with law or not?
2. What order ?

5. My findings to above said points as under;

Point No.1 : In the Negative.

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

REASONS

6. **Point No.1:-** On perusal of the entire materials available on record the petitioner filed a suit in O.S.No.488/1999 for the relief of partition and separate possession against respondents. After hearing on both side on 12-02-2002 the suit of the plaintiff is decreed, the plaintiff is entitled $\frac{6}{15}^{\text{th}}$ share in the suit schedule properties. Further the item No.1 to 11, 13 to 15 are the landed properties, item No.12 is the house property. The decree obtain by the petitioner with regard to



Assessment No.243 khaneshumari No.273 Mud Roofed house measuring 26 ankanas situated at Chikkadavalahatti Village, I.D.Halli Hobli, Madhugiri Taluk.

7. After filing the present petition this court appointed the advocate as court commissioner to conduct the work pertaining to item No.12 of the suit property and the commissioner conduct the commission work and submit his report. On careful perusal of the report in the Southern side of the said property there is a vacant space same was measured by the commissioner and reported the extent as East to West 110 feet, North to South 59 feet and the said property is not subject matter of the suit. Further he conducted the commission work with regard to 26 ankanas and he has not clearly stated in his report to extent and boundaries with regard to shares of petitioners and respondents. Further, the commissioner conducted the commission work exceeding his limit and the court can appointed the commissioner to conduct the commissioner work with regard to item No.12 of the suit property and while conducting the commission work the commissioner not considered the sale deed dated:16-04-1999 and 23-11-2001 and the report submit by the commissioner is not in accordance with law and the objection raised by the respondent counsel is accepted. Hence, for the above said reasons my findings to point No.1 in the Negative.

8. **Point No.2** : - In view of above said discussion I pass the following;



ORDER

The report submit by the commissioner dated:13-12-2022 is hereby rejected.

Further to appoint a fresh commissioner i.e., AEE, Madhugiri to conduct commissioner work and submit his report with regard to item No.12 of the suit property. Further both the parties are directed to file memo of instructions.

Further office is here directed to issue fresh commissioner warrant to conduct the commission work, after receiving the entire documents.

Call on for commissioner report by :

(Dictated to Stenographer directly on computer, computerized by him, corrected and signed by me and then pronounced in the open Court on this the **9th day of August 2023**)

Sd/-
(Raghunatha Gowda K.T.)
Prl. Civil Judge & JMFC,
Madhugiri.