

ORDERS

This final decree proceedings came to be initiated by the petitioner/defendant No.2 in order to give effect to the preliminary decree passed in O.S.NO. 94/2011 instituted by respondent No.1 wherein it was declared that plaintiff/defendant No.1 and defendant No.6 were entitled for 1/6th share each in the suit A and B schedule properties except item No.7 of suit A schedule property.

2. In the present petition, the petitioner has also sought for modification of shares of the parties into 1/4th share by passing supplementary preliminary decree on the ground of death of the father and mother of the petitioner and respondents.

3. It is an admitted fact that Respondent No.1 has filed the suit vide O.S.No. 94/11 seeking for the relief of partition and separate possession of suit schedule properties in which it was held that plaintiff/respondent No.1 and defendant No.6 are entitled for 1/6th share. It is further stated that Nemu Ira Naik and his wife Mohini, father and mother of the

petitioner and respondents died on 19/10/2017 and 28/07/2020 respectively. There is no dispute in respect of the death of the parents of the petitioner and respondents.

4. On going through the judgment and decree passed in O.S.NO. 94/2011, it reveals that said Nemu Ira Naik and Mohini were arrayed as defendant No.1 and 6 respectively in the said suit and though the share of deceased Nemu Ira Naik was not declared but on going through the entire judgment, it clearly discloses that plaintiff and defendant No.1 to 4 and 6 were entitled for 1/6th share each. But after the passing of preliminary decree and before instituting the final decree proceedings, defendant No.1 and 6 of O.S.No.94/11 died, as such their extent of share devolves upon surviving coparceners who are the petitioner and respondents and on the death of the party, the share of the parties gets enhanced. It is always open for the Court to pass supplementary preliminary decree if there is any change of law or if any party dies during the pendency of the suit since the suit for partition does not come to an end by passing a preliminary decree but it is the continuation of final decree proceedings. As such since father and mother of the parties died during the pendency of the proceedings, the shares of the parties gets enlarged and the petitioner and respondent No.1 to 3 being their legal

heirs are entitled for 1/4th share each in the suit schedule A and B property except item No.7 of suit A schedule property. Therefore, there is no impediment for this Court to pass supplementary preliminary decree in this regard. However, in order to avoid the future inconvenience, this Court deems fit to declare the shares of all the parties. Hence, **this Court proceeds to pass the following -**

ORDER

“The Plaintiff and defendant No.2 to 4 are entitled for 1/4th share each in suit “A” and “B” schedule properties except item No.7 of suit “A” schedule property subject to payment of court fees.”

Since defendant No.3 died during the pending of the proceedings, his 1/4th share devolves upon his heirs who are arrayed as respondent No.2(a) and (b) in F.D.P.No.08/2023, as such Respondent No.2(a) and (b) are together entitled for 1/4th share in the aforesaid properties.”

Accordingly, office is hereby directed to draw supplementary preliminary decree.

C/c Civil Judge, Ankola.