

KAUK510001662014



IN THE COURT OF THE CIVIL JUDGE & JMFC., HALIYAL  
AT : HALIYAL, UTTAR KANNADA

PRESENT: - DESHABHUSHAN KOUJALAGI,  
B.A.LLB.,,  
CIVIL JUDGE & JMFC., HALIYAL

DATED THIS THE 07<sup>th</sup> DAY OF MARCH, 2024

FDP No.02/2014

**PETITIONERS :** Shri. Hanumanth Gangappa Javalkar  
deceased by his LRs.

1(a). Shri. Mahabaleshwar Hanumanth  
Javalkar,  
Aged 50 years, Occ: Agriculture,

1(b). Shri. Krishnaji Hanumanth Javalkar,  
Age 48 years, Occ: Agriculture,

1(c). Shri. Shivaji Hanumanth Javalkar,  
Age 46 years, Occ: Agriculture,

1(d). Shri. Shankar Hanumanth Javalkar,  
Age 44 years, Occ: Agriculture,

All are R/o. Haliyal,  
Taluka : Haliyal, Dist: Uttar Kannada.

1(e). Smt.Shanta W/o Yallappa Hanchinamani,  
Age: 66 years, Occ: Household,  
R/o. Basavalli, Haliyal,  
Taluka : Haliyal, Dist: Uttar Kannada.

1(f). Smt. Kantavva W/o Rudrappa Pujari,  
Age: 64 years, Occ: Household,  
R/o. Shettigalli, Haliyal,  
Taluka : Haliyal, Dist: Uttar Kannada.

1(g). Smt. Kalpana W/o Fakira Dongre,  
Age: 34 years, Occ: Household,  
R/o. Shettigalli, Haliyal,  
Taluka : Haliyal, Dist: Uttar Kannada.

**(By Shri. R.R.D., Adv.)**

V/s

**RESPONDENTS: 01.** Shri. Kedari Gangappa Javalkar deceased  
by his LRs.

1(a). Shri. Parashuram Kedari Javalkar,  
Age: 69 years, Occ: Agriculture,

1(b). Shri. Mahadev Kedari Javalkar,  
Age: 59 years, Occ: Agriculture,

1(c). Shri. Sahadev Kedari Javalkar,  
Age: 57 years, Occ: Agriculture,

1(d). Shri. Nakul Kedari Javalkar,  
Age: 52 years, Occ: Agriculture,  
All R/o. Haliyal, Tq: Haliyal,  
Dist: Uttar Kannada.

1(e). Smt. Bayavva Bhimarao Kumbarkoppa  
(deceased),  
Age: 79 years, Occ: Household,  
R/o. B. K Halli,  
Taluka : Haliyal, Dist: Uttar Kannada.

1(e)(i). Shri. Bhimarao Shivaray Kumbarkoppa  
(deceased),  
Age: Major, Occ: Agriculture,  
R/o. Kakkeri Village, Tq: Khanapur.

- 1(e)(ii). Smt. Indumati D/o Bhimarao Kumbarkoppa,  
Age: Major, Occ: Household,  
R/o. Kakkeri Village, Tq: Khanapur.
- 1(e)(iii). Smt. Kusuma D/o Bhimarao Kumbarkoppa,  
Age: Major, Occ: Household,  
R/o. Kakkeri Village, Tq: Khanapur.
- 1(e)(iv). Smt. Mangala D/o Bhimarao Kumbarkoppa,  
Age: Major, Occ: Household,  
R/o. Kakkeri Village, Tq: Khanapur.
- 1(e)(v). Smt. Shalini d/o Bhimarao Kumbarkoppa,  
Age: Major, Occ: Household,  
R/o. Kakkeri Village, Tq: Khanapur.
- 1(e)(vi). Shri. Malleshi Bhimarao Kumbarkoppa,  
Age: Major, Occ: Household,  
R/o. Kakkeri Village, Tq: Khanapur.
- 1(e)(vii). Shri. Santosh Bhimarao Kumbarkoppa,  
Age: Major, Occ: Household,  
R/o. Kakkeri Village, Tq: Khanapur.
- 1(f). Smt. Laxmi Maruti More,  
Age: 65 years, Occ: Household,  
(deceased)
- 1(f)(i). Shri. Maruti Fakirappa More,  
Age: 65 years, Occ: Agriculture,  
R/o. B. K. Halli, Village,  
Tq: Haliyal, Dist: Uttar Kannada.
- 1(f)(ii). Shri. Sanju Maruti More,  
Age: 45 years, Occ: Agriculture,  
R/o. B. K. Halli Village, Tq: Haliyal,  
Dist: Uttar Kannada.

- 1(g). Smt. Sumitra W/o Yallappa Ghadi,  
Age: 42 years, Occ: Household,  
R/o. Nandgad, Tq. Khanapur,  
Dist: Belagavi.
- 1(h). Smt. Gangavva Nagendra Karlekar,  
Age: 34 years, Occ: Household,  
R/o. Alnavar, Tq. & Dist: Dharwad.
2. Shri. Somaning Gangappa Javalkar,  
deceased by his LRs.
- (a) Smt. Demakka Somaning Javalkar,  
Age about 65 years, Occ: Agriculture,  
R/o. Haliyal, Tq: Haliyal,  
Dist: Belagavi.
- (b) Smt. Shakuntala Gangappa Radoli,  
Age about 50 years, Occ: Household,  
R/o. Murkatti, Tq: Haliyal,  
Dist: Uttar Kannada.
- (c) Smt. Anjani @ Laxmibai Arun Chavan,  
Age about 45 years, Occ: Household,  
R/o. Totagi Village, Tq: Khanapur,  
Dist: Belagavi.
- (d) Shri. Santhosh Somaning Javalkar,  
Age: 35 years, Occ: Agriculture,  
R/o. Mahaveer Galli, Haliyal,  
Tq: Haliyal, Dist: Uttar Kannada.
- (3) Shri. Bhimray Gangappa Javalkar,  
deceased by LRs.
- (a) Shri. Gopal Bhimray Javalkar,  
Age about 48 years, Occ: Agriculture.
- (b) Shri. Arun Bhimray Javalkar,  
Age: 45 years, Occ: Agriculture,  
Both R/o. Haliyal,  
Tq: Haliyal, Dist: Uttar Kannada.

- (c) Smt. Bhagirathi Bhimray Javalkar,  
Age: Major, Occ: Household,  
R/o. Haliyal, Tq: Haliyal (U.K).
- (d) Smt. Halavva Hanumanth Gupit,  
deceased by her LRs.
- 3(d)(i) Shri. Manjunath Hanumant Gupit,  
Age: 45 years, Occ: Agriculture,  
R/o. Haliyal, Tq: Haliyal,  
Dist: Uttar Kannada.
- 3(d)(ii) Shri. Bhimmarao Hanumant Gupit,  
Age about 35 years, Occ: Agriculture,  
R/o. Haliyal,  
Tq: Haliyal, Dist: Uttar Kannada.
- (e) Smt. Prema @ Basavanni W/o Belurao Savant,  
Age about 45 years,  
Occ: Household,  
R/o. Gokul Road, Hubballi.
- (f) Smt. Subhadra W/o Nagendra Patil,  
Aged about 35 years, Occ: Household,  
R/o. Jungwada Village, Tq: Khanapur,  
Dist: Belagavi.

*( R-1(a) to (e), (g) & (h), 1(e)(ii) to  
1(e)(vii) By Sri. M.B.P., Advocate)  
( R-2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(i),  
3(d)(ii) By Sri. G.G.G., Advocate)*

**ORDER ON REPORT OF COURT COMMISSIONER**

**IN RESPECT OF PETITION SCHEDULE**

**AGRICULTURAL LANDS**

The present petition is filed by the petitioners under Order  
XX Rule 18 R/w Section 151 of C.P.C against the respondents to

draw final decree based on preliminary decree passed by this Court in O.S No.97/1982 dated 19.03.1994.

**02.** The judgment and decree passed by this Court in O.S No.97/1982 is confirmed by the Hon'ble Civil Judge (Sr.Dn) Yellapur, Sitting at Haliyal by its judgment and decree dated 26.11.2013 in R.A No.66/2006.

**03.** Against the judgment and decree passed by this Court in O.S No.97/1982 and against the judgment and decree passed by the Hon'ble First Appellate Court in RA No.66/2006, the respondents have preferred regular second appeal in RSA No.100105/2014 before the Hon'ble High Court of Karnataka and as per version of the respondents, the said RSA is still pending for consideration. However, it is admitted fact that, there is no stay of this proceedings in RSA No.100105/2014.

**04.** With the aforesaid backgrounds, Court inclines to state that, originally, Sri. Hanumanth S/o Gangappa Jawalkar being the plaintiff had filed OS No.97/1982 against his three brothers i.e., Sri. Kedari S/o Gangappa Jawalkar, Sri. Somaning S/o Gangappa Jawalkar and Sri. Bhimaray S/o Gangappa Jawalkar. As per judgment passed in O.S No.97/1982, it could be gathered that,

defendants No.2 and 3 i.e., Sri. Somaning S/o Gangappa Jawalkar & Sri. Bhimaray S/o Gangappa Jawalkar were died during the pendency of the suit and their LRs were brought on record in OS No.97/1982. In O.S No.97/1982, it was held that, plaintiff Sri. Hanumanth S/o Gangappa Jawalkar is entitled for partition and separate possession of 1/4th share in the suit schedule properties i.e., 05 agricultural lands and 03 house properties.

**05.** This petition is registered on 17-02-2014. At the time of filing of this petition, all the parties to the suit in O.S No.97/1982 were died and as such, the LRs of original plaintiff has filed this petition against the LRs of original defendants.

**06.** It is pertinent to note that, so far as the petition schedule agricultural lands are concerned, the Court Commissioner has submitted his report in the year 2015 itself i.e., almost 09 years back. After filing of such report, very recently, the respondents No.1(a) to 1(h) and respondents No.2(b) to 2(d), respondents No.3(a), 3(b) and 3(d)(ii) have filed the objections to the main petition and also objections to the report of the Court Commissioner.

**07.** As per the order of this Court on I.A.No.I, the Court Commissioner has submitted his report to the Court on 13.01.2015 in respect of petition schedule agricultural lands. After submission of the said report, the petitioners have submitted no objections to the said report. On the other hand, the aforesaid respondents have filed objections to the Court Commissioner report.

**08.** The respondents No.1(a) to 1(h) and respondents No.2(b) to 2(d), respondents No.3(a), 3(b) and 3(d)(ii) have taken more or less similar contentions in the objections to the report of the Court Commissioner. The sum and substance of objections of the aforesaid respondents to the report of the Court Commissioner are that, the Court Commissioner has not submitted his report in respect of petition schedule house properties and as such, effective final decree cannot be passed and partial commissioner report in respect of agricultural lands cannot be accepted by the Court. It is further contended in the objections that, the Commissioner has submitted the panchanama in respect of the petition schedule agricultural lands and from bare perusal of the said panchanama, it could be gathered that, the Commissioner has taken the signature of the parties i.e., Mahabaleshwar Javalekar, Krishna Javalekar,

Shivaji Javalekar and Shankar Javalekar by way of manipulation as the wordings in the panchanama are attached to each other and as such, the said manipulation itself shows that, commission work is not done on the spot.

**09.** It is further contended in the objections to the main petition that, prior to submitting the report, the commissioner has not furnished the copies of his report to the concerned advocate who were already on record and he has not furnished the copies of his report to the respondents. The Commissioner has not executed the common work as per the guidelines issued by the Hon'ble High Court in W.P No.201274/2022 (GM&PC) in the case of Shri. Shedaksharappa S/o Veeranna vs. Kumari Vijaylaxmi D/o Bhimappanna and Others and as such, the report of the commissioner cannot be accepted.

**10.** It is further contended in the objections to the report of the commissioner that, the sketch which is prepared by the Court Commissioner in respect of the land bearing Block No.81 discloses the recitals that, at the time of measurement of the said land, the plaintiffs and panchas were present. However, in the panchanama of the Commissioner, it is mentioned that, four defendants were

present at the time of measurement of the said property. Therefore, the aforesaid contradictions itself clearly goes to show that, the survey report has been prepared in the office and not in the spot. It is further stated in the said sketch of Block No.81 by the Commissioner that, the bifurcation of the land has been made on the basis of actual possession of the plaintiffs. However, it is not the case of the plaintiffs in O.S No.97/1982 that, they are in actual possession of some portion of the land in Block No.81. Hence, the Court Commissioner has conducted the commission work on the basis of say of the petitioners. The Court Commissioner has not bifurcated fertile and non-fertile land and he has not mentioned the value of the property in his report.

**11.** It is further contended in the objections to the report of the Court Commissioner that, the Commissioner has not shown the approach road to the each of the lands which has been bifurcated by him and as such, if the report is accepted, it will lead to another set of litigation and as such, the report is liable to be rejected. In the Watap Takthe prepared by the Court Commissioner, he has not shown the portion of the land which has been purchased by the purchaser and as such, the report is liable to be rejected. Even the

extent of land which has been purchased by the purchaser is not mentioned and the Commissioner has not clearly mentioned the possession of the land by the purchaser in his sketch and report. The said loopholes clearly shows that, the commissioner has not conducted the commission work in the spot. The area of land which has been allotted to the respective parties by the Court Commissioner is not in accordance with preliminary decree and it will affect the rights of the respondents. As such, the report is liable to be rejected.

**12.** It is further contended in the objections that, at the time of commission work on 20.10.2014, the respondents No.1(a) to 1(h) have given the copy of RSA appeal memo to the Court Commissioner and by looking into the same, the Court Commissioner has returned to the office without executing the work. Thereafter, the Court Commissioner has not informed the respondents about the future date and time for execution of commission work and as such, the respondents No.1(a) to 1(h) are not aware of the execution of commission work by the Commissioner and they were also unaware about submission of the report by the Commissioner. The Court Commissioner has never

visited the spot in the second time and he has prepared the report as per wish and convenience of the petitioners.

**13.** It is further contended in the objections that, the panchanama was prepared by the Commissioner is bogus and after taking signature of the petitioners, the writings have been made and it is also false to state that, the respondents have refused to sign the panchanama. The respondents No.1(a) to 1(h) have not been informed about the work and as such, they were not present at the spot.

**14.** It is further contended in the objections to the report of the Commissioner that, the Commissioner has clearly stated in his report that, the plaintiffs are not having wahiwat of the properties and as per the say of the petitioners, the division has been made. The said recitals goes to show that, the Commissioner has not visited the agricultural properties but he has prepared the scheme of partition as per the say of the petitioners. The report of the Commissioner is one sided, biased and it will cause loss to the respondents No.1(a) to 1(h). The Commissioner has not demarcated the connecting roads to the each lands and he has not explained as to how ingress and egress could be made by the

parties to their lands. Even though the Court Commissioner was aware of alienation of some portion of the land but by colluding with the petitioners, he has filed the false report and the report submitted by the Court Commissioner is not in accordance with preliminary decree and as such, it is liable to be rejected.

**15.** Heard on both side. Perused entire materials.

**16.** Having heard and perusal of the records, the following points arise for the consideration of the Court:

**POINT NO.1:** Is the Court Commissioner report in respect of petition schedule agricultural lands is in accordance with preliminary decree or it requires to be set aside?

**POINT NO.2:** What order?

**17.** Answers of the Court to the aforesaid Points are as under:

**POINT NO.1:** In the Affirmative.

**POINT No.2:** As per final order for the following:

### **REASONS**

**18. POINT NO.1:** As already stated above, the present petition is filed by the petitioners to draw final decree based on

preliminary decree passed in OS No.97/1982. There are 05 agricultural lands and 04 house properties involved in this petition and the Court Commissioner has submitted his report in respect of agricultural lands and it is necessary to find out whether, his report is in accordance with preliminary decree or not.

**19.** This Court in OS No.97/1982 has held that, the petitioners are entitled for 1/4th share in both agricultural and house properties. The petitioners have submitted no objections to the report of the Court Commissioner. On the other hand, the above said respondents have submitted their written objections to the Court Commissioner report and the contentions taken in their objections has already been narrated in detail in the aforesaid paragraphs. The learned counsels for the aforesaid respondents have submitted their arguments in consonance with the objections filed for the report of the Court Commissioner.

**20.** Petition Schedule 1(a) property is the land bearing Block No.27/2 measuring 31 acres 24 guntas of Chatranal Village of Haliyal Taluka. As per Watap Takhte and sketch of the Commissioner, it is suggested to allot 07 acres 36 guntas including 11 guntas of kharab land to the petitioners which has been shown

as Hissa-I. Remaining land measuring 23 acres 28 guntas of land including 21 guntas of kharab land is suggested to be left for the respondents and the same is shown as Hissa-II. As per the sketch, approach road is available to the petitioners as well as respondents. As per sketch of the Commissioner, the land which is suggested to be allotted to the petitioners is dry land. Hence, Court does not find any fault in the report of the Commissioner in respect of aforesaid land.

**21.** Petition Schedule 1(b) property is the land bearing Block No.139/7 measuring 07 acres 02 guntas of Guttigeri Village of Haliyal Taluka. As per Watap Takhte and sketch of the Commissioner, it is suggested to allot 01 acre 30 guntas and 09 anas of land to the petitioners which has been shown as Hissa-II.

**22.** The Court Commissioner in his sketch and Whatp Thakhte has shown 04 acres 11 guntas of land in the name of defendants as Hissa-I and out of the same, it is reported that, 02 acres of land is entered in the name of Maratha Parishath, Haliyal on the basis of compromise decree passed in OS No.105/2008. The Commissioner has further reported in the sketch

that, remaining 01 acre of land is purchased by Chatrapathi Shivaji Education Trust, Haliyal and the same is shown as Hissa-III. As per the sketch prepared for Block No.139/7, approach road is available to all parties.

**23.** During the course of arguments, it is admitted fairly on both side that, the petitioners have not made any alienation of land in Block No.139/7 of Guttigeri Village in favour of anybody. When such being the case, it could be gathered that, the respondents have made said alienation during the pendency of determination of rights of the parties to the litigation. Hence, pendente lite purchasers are bound by the Court decree passed in OS No.97/1982. Moreover, the said alienation is not made by the petitioners and petitioners are stated to be the non-parties to the compromise decree. When such being the case, it is the respondents who have to work out their shares in the remaining land.

**24.** It is one of the contention of the respondents that, the Court Commissioner should not have proceeded further for execution of commission work in respect of land bearing Block No.139/7 as some portion of the land has been alienated. Though it

is true that, some portion of the land has been alienated in Block No.139/7 but the said alienation is made by the respondents and not by the petitioners. Moreover, 1/4th share of petitioners in the land bearing Block No.139/7 is available to carve out. Merely because the alienation has taken place is not a ground to stop execution of commission work. When such being the case, the contention of the respondents cannot be accepted.

**25.** Apart from the above, the conduct of the respondents has to be gathered here. Before determination of rights of the parties, the respondents have parted with portion of the land in Block No.139/7 of Guttigeri Village and they have not even bothered to bring into the notice of the Court regarding said alienation. When parties to the proceedings make transactions in respect of suit properties with third parties without obtaining prior permission of the Court, they cannot seek any equity from the hands of the Court. The respondents have suppressed the fact of said alienation. Hence, the approach of the respondents is not with clean hands.

**26.** The judgment and decree passed in OS No.97/1982 was confirmed in R.A No.66/2006 by the Hon'ble Senior Civil Judge,

Yallapur, Sitting at Haliyal by way of judgment and decree dated 26-11-2013 and till today i.e., even after lapse of 10 years of the judgment and decree of Hon'ble First Appellate Court, the petitioners are not in a position to enjoy the fruits of the decree. Even though the respondents have appeared in this proceedings from initial stage itself but, very recently, they are started to contest the petition. Though it is true that, some of the respondents were died during the pendency of the petition but, the LRs of such respondents are stepped into the shoes of deceased respondents. Even though the Court Commissioner has submitted his report in the year 2015 itself but, the original respondents have not bothered to file any objections to the said report and after lapse of 09 years, the aforesaid respondents have filed objections to the report of the Commissioner. Hence, Court opines that, the respondents intend to prolong the matter on one or other grounds.

27. Till today, the respondents have not brought to the notice of the Court with regard to aforesaid alienation made by them and compromise decree passed in OS No.105/2008. Moreover, as already stated above, in OS No.97/1982, it was held that, the petitioners are entitled for 1/4th share. When 1/4th share is

available to the petitioners in Block No.139/7 of Guttigeri Village, the Court Commissioner has suggested to allot the same to the petitioners. Hence, Court does not find any fault in the report of the Commissioner in respect of Block No.139/7 of Guttigeri Village.

**28.** Petition Schedule 1(c) property is the land bearing Block No.24 measuring 04 acres 07 guntas of Chatranal Village of Haliyal Taluka. As per Watap Takhte and sketch of the Commissioner, it is suggested to allot 01 acre 01 gunta and 12 anas of land to the petitioners which has been shown as Hissa-II. Remaining land measuring 03 acres 05 guntas and 04 anas of land is suggested to be left for the respondents and the same is shown as Hissa-I. As per the sketch and report, entire land is dry land.

**29.** Petition Schedule 1(d) property is the land bearing Block No.81 measuring 04 acres 15 guntas of Haliyal Village of Haliyal Taluka. As per Watap Takhte and sketch of the Commissioner, it is suggested to allot 01 acre 04 gunta of land to the petitioners which has been shown as Hissa-I. Remaining land measuring 03 acres 11 guntas of land is suggested to be left for the respondents and the same is shown as Hissa-II. As per the sketch and report, the land which is shown to be allotted to the petitioners

is dry land and remaining land is wet land. Hence, Court opines that, the scheme partition suggested by the Commissioner is in accordance with preliminary decree.

**30.** Petition Schedule 1(e) property is the land bearing Block No.97/1A measuring 06 acres 37 guntas excluding 06 guntas of kharab land of Hullatti Village of Haliyal Taluka. As per Watap Takhte and sketch of the Commissioner, it could be gathered that, Block No.97/1 is already sub-divided into Block No.97/1A measuring 07 acres 03 guntas and Block No.97/1B measuring 01 acre 01 gunta. The present petition is only in respect of 07 acres 03 guntas of land in Block No.97/1A.

**31.** The Court Commissioner in his sketch and Whatap Takhte of Block No.97/1A has suggested to allot 02 acres 01 gunta of land to the petitioners which has been shown as Hissa-II. Remaining land measuring 05 acres 02 guntas of land is suggested to be left for the respondents and the same is shown as Hissa-III. It is pertinent to note that, 1 acre 1 guntha of land is shown by the commissioner as Hissa-I and it is stated that, the said land is standing in the name of one Shri. Narayan S/o Khemanna Thosur.

**32.** As per the decree passed in O.S No.97/1982, total extent

of Survey No.97 of Hullatti Village is shown as 7 acres 37 gunthas. During the course of arguments, the learned counsel for the petitioners has stated that, total extent of Block No.97/1 is 8 acres 4 gunthas of land and out of which, 7 gunthas of land is kharab land. It is further argued that, in O.S No.97/1982, said kharab land is not included in Survey No.97/1. It is also argued that, before determination of rights of the parties, the respondents have sold Hissa-I which is shown by Commissioner in his Sketch pertaining to Block No.97/1A. On going through the entire materials, it prima-facie discloses that, out of total extent of land, 1 acre 1 guntha of land in Survey No.97/1 is already parted with which is shown by the Commissioner in his Sketch as Hissa-I. Despite the same, the extent of land which is allotted to be the petitioners is available in Survey No.97/1A and the same is shown by the Commissioner as Hissa-II. Therefore, the scheme of partition suggested by the Court Commissioner in respect of Block No.97/1A is with no fault.

**33.** At this stage, the Court inclines to state that, out of 7 gunthas of kharab land in Survey No.97/1A, 6 gunthas kharab land is shown in Hissa-III and remaining 1 guntha of kharab land is

shown Hissa-I. No kharab land is shown in Hissa-II. However, in the scheme of partition in respect of land bearing Block No.27/2 of Chatranal Village, 11 gunthas of kharab land out of total 32 gunthas of kharab land is shown by the Commissioner towards the share of petitioners. Whereas, only 21 gunthas kharab land out of total 32 gunthas of kharab land is shown towards the share of the respondents. Hence, Court does not find any fault in respect of the suggestion of the Commissioner in showing the kharab land in Block No.97/1A of Hullatti Village and 27/2 of Chatranal Village.

**34.** It is pertinent to note that, the Commissioner has made a remark in the sketch of Block No.24, Block No.139/7, 97/1A and 27/2 that, the petitioners are not in possession of the land and he has shown the proposed Hissas of the petitioners on the basis of the say of the petitioners. This aspect has been objected by the respondents. The learned counsel for the respondents have argued that, the said remark itself shows that, the Commissioner has submitted his report as per the say and convenience of the petitioners.

**35.** So far as aforesaid contention of the learned counsels for the respondents is concerned, Court inclines to state that, the report

of the Court Commissioner is not actual allotment of the share to the parties by the Commissioner. It is just a scheme of partition which would suggest by the Commissioner and ultimately, it is the Court which has to decide as to whether the report of the Commissioner is feasible or not to enjoy the properties by the parties to the litigation. Hence, said contention of the respondents is not sustainable.

**36.** One who opposes the report of the Court Commissioner has to convince the Court as to how the scheme of partition suggested by the Commissioner is not feasible to be used and enjoyed. The respondents are more concentrating on technical lacuna of Commissioner instead of practical difficulties which would be faced by the parties if the report of Commissioner is accepted by the Court.

**37.** The learned counsel for the respondents have further argued that, no approach road is shown by the Commissioner in his sketch in respect of Block No.24 and 81. When the respondents contend that, Commissioner has not shown the approach road in his report then they could have stated in their objections as to in which portion of the land the road is situated and how the present sketch

prepared by the Commissioner would lock the proposed share of the respondents. The respondents have simply contended that, the Commissioner has not shown approach road to all parties in Sy. No.24 and 81. If they say so, it is them to reveal before the Court as to where the road is situated and how the report of the Court Commissioner would affect the respondents. Moreover, if there is no approach road to any party, he will be having easmentary right of way in another's land and the other land holder is under an obligation to provide road. Hence, the said contention of the respondents cannot be accepted.

**38.** One more line of arguments of the learned counsel for the aforesaid respondents that, the Commissioner has submitted his report only in respect of agricultural lands and no report is submitted in respect of house properties and as such, partial report of the Commissioner cannot be accepted. This line of arguments holds no water. Because as of now, the Court is not passing order for final decree on the basis of report of agricultural lands. After the receipt of report of Commissioner in respect of house properties, occasion of passing an order for drawing of final decree

would arise and at this stage itself, the Court is not drawing final decree only in respect of agricultural lands.

**39.** Another ground for rejection of report of the Court Commissioner is that, prior notices have not been issued by the Court Commissioner to the respondents before alleged execution of commission work. In this regard, the Court inclines to state that, the conduct of the respondents should be taken into consideration. As per Jawab at Page No.43 of the report of the Court Commissioner, he had visited the spot for execution of commission work on 20.10.2014 and at that time, the petitioner No.1(a) to 1(d) and respondents No.1(a), 1(b), 1(c) and 1(d) were present in the spot and due to galata, the Commissioner has returned without execution of the commission work and in this regard, the aforesaid respondents have signed and put their thumb impression to the said Jawab. Before fixing the date of execution of commission work, the Commissioner had issued prior notices to the respondents in the first occasion. At that time, the said notices have been received by the respondent No.1(c), 1(a), 1(b), 1(d). The Postal Acknowledgment of the same is in file at Page No.22 to 24 and 28 of the report. Similarly, the said notices have not been claimed by

the respondents No.2(d), 3(b), 3(c), 3(a) and Postal Acknowledgment of the same is in file at Page No.31 to 36 of the report.

**40.** When the Court Commissioner could not execute the commission work on 20.10.2014, he has fixed another date i.e., 7.11.2014 for execution of commission work. Prior to the said date, the Court Commissioner has issued notices to the respondents but, the notices of the respondent No.1(a) to 1(d) returned unserved with a shara that, addressee not found. The same could be found at Page No.37 to 40. When the Court Commissioner has issued notice at first occasion to conduct commission work on 20.10.2014, the respondents have received notices and they were also present in the spot. However, when the Commissioner issued notice on second time by fixing the date of commission work on 7.11.2014, the Postal Receipts of the same respondents returned as addressee not found. This conduct of respondent clearly discloses that, the respondents have intentionally kept their absence. Apart from this, the respondents were prosecuting the case through their counsel and they knew the stage of the proceedings. In spite of the same, they have remained absent without any just cause. Therefore, the

contention of the respondents that, the Commissioner has not issued prior notice to them cannot be accepted.

41. Apart from the above, even if for the sake of arguments, it is considered that, the Court Commissioner has not issued prior notices to the respondents but, they could convince the Court as to how the report of the Court Commissioner is wrong. On going through the report of the Court Commissioner, he has suggested the division of the landed properties in accordance with preliminary decree. Hence, the respondents have not shown any vital grounds to reject the report of the Court Commissioner. Moreover, if really, the report of the Court Commissioner is not in accordance with preliminary decree then the aforesaid respondents could have summoned or could have sought for summoning the Court Commissioner for his examination. The respondents have not at all made any such attempts to summon the Court Commissioner.

42. It is one more contention of the respondents that, the Hon'ble High Court of Karnataka has issued some guidelines to accept the Commissioner report in the case of *Shadaksharappa S/o Veranna vs Kumari Vijayalaxmi and Others in W.P.No.201274/2022 (GM-CPC) dated 24.01.2023* and as per said

guidelines, the Commissioner has not done proper commission work. This Court is of full agreement with the principles enunciated in the aforesaid decision and guidelines issued therein. However, in the present case, the Court Commissioner has submitted his report in the year 2015 itself. When such being the case, the decision relied upon by the respondents would not assist them in rejecting the report of the Court Commissioner.

43. It is one more contention of the respondents that, the the line and style of writing at Page No.43 of the jawab recorded by the Commissioner itself goes to show that, he has taken signature of the parties in blank paper and thereafter, he has made writings therein by adjusting the lines and said manipulation itself discloses that, the Court Commissioner has not conducted the commission work in the spot. The Court has gone through the same. The said jawab is in respect of non-execution of commission work on 20.10.2014 for which some of the respondents have also put their signatures. If really, the Commissioner has taken the signature of the parties on blank paper then the concerned parties would have stated the same before the Court. However, none of the parties have complained that, the Commissioner has taken

signature of the parties on blank paper. Hence, the said contention is also not sustainable. Therefore, the Court does not find any grounds to reject the report of the Commissioner. The Court opines that, the report of the Commissioner is in accordance with preliminary decree and the scheme of partition suggested by the Commissioner is practically enjoyable by the parties. With this discussion, Point No.1 is answered in the **AFFIRMATIVE**.

44. **POINT NO.2:** In view of findings on Point No.1, the Court proceeds to pass the following:

**ORDER**

The Court Commissioner report in respect of petition schedule agricultural lands dated 13.01.2015 is in accordance with preliminary decree passed in O.S No.97/1982 and accordingly, the said report of the Court Commissioner is hereby accepted.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the *7<sup>th</sup> Day of March, 2024*)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge & J.M.F.C.,Haliyal.