

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC., KUMTA
PRESENT

Sri Vignesh Kumar, B.A.(Law), LL.B.
Prl. Civil Judge and JMFC., Kumta

F.D.P. No. 7/2011

Dated this the 12th date of October 2018

Petitioner/
Respondent

: Beeru W/o. Nagappa Patagar (dead)
Rep. By her LR. Gopi W/o. Hanumanth
Patagar, 69 yrs,
R/o. Bada, Tq. Kumta

(By Sri Y.V.S. Advocate)

V/s

Respondent
Applicant

- : 1. Narayan Nagappa Patagar (dead)
Rep. by his Lrs
1(a) Mahadev Narayan Patagar,
Age 52 yrs, Agriculture,
R/o. Gudeangadi, Tq. Kumta
1(b) Venkatraman Narayan Patagar,
Age 50 yrs, Agriculture,
R/o. Gudeangadi, Tq. Kumta
1(c) Nagappa Narayan Patagar,
Age 48 yrs, Agriculture,
R/o. Gudeangadi, Tq. Kumta
1(d) Shridhar Narayan Patagar,
Age 46 yrs, Employee,
K.D.C.C. Bank, Karki, Tq. Honavar
1(e) Ramakrishna Narayan Patagar,
Age 44 yrs, Agriculture,
R/o. Gudeangadi, Tq. Kumta



2. Goydappa Nagappa Patagar,
Age 76 yrs, Agriculture,
R/o. Gudeangadi, Tq. Kumta
3. Soolappa Nagappa Patagar,
Aged about 70 years,
Occ:Agriculturist, R/o:Gudeangadi,
Tq:Kumta.
- 4, Jattu Kom Narayan Patgar Decased
Lrs,
 - 4(a) Shankar Narayna Patgar,
Aged about 66 years, Occ:Retd
Teacher, R/o: Hervatta, Kumta.
Tq:Kumta.
 - 4(b) Krishnappa Narayna Patgar,
Aged about 63 years, Occ:Retd
Teacher, R/o: Hervatta, Kumta.
Tq:Kumta.
 - 4(c) Girija Kom Ishwar Patgar,
Aged about 55 years, Occ:Household
R/o: Hegde, Kumta.
Tq:Kumta.
 - 4(d) Mohini Kom Subraya Patgar,
Aged about 53 years, Occ:Household
R/o: Bargi, Kumta.
Tq:Kumta.
 - 4(e) Sarojini Kom Ghatta Patgar,
Aged about 51 years,
Occ:Household, R/o: Police Qtrs,
Ankola. Tq:Ankola.
 - 4(f) Vijaya Kom Rama Patgar,
Aged about 49 years,
Occ:Household, R/o: Bargi,
Tq:Kumta
 - 4(g) Kamal Kom Laxmnan Patgar,
Aged about 36 years,
Occ:Household, R/o: Kagal,
Tq:Kumta



5. Shivamma Kom Beerappa Patgar
Deceased Lrs.
- 5(a) Mahadev Narayan Patgar,
Aged about 52 years,
Occ:Ryot, R/o: Gudeangadi,
Tq:Kumta
- 5(b) Venkatraman Narayan Patgar,
Aged about 50 years,
Occ:Ryot, R/o: Gudeangadi,
Tq:Kumta
- 5(c) Nagappa Narayan Patgar,
Aged about 48 years,
Occ:Ryot, R/o: Gudeangadi,
Tq:Kumta
- 5(d) Shridahr Narayan Patgar,
Aged about 46 years,
Occ:Service, R/o: KDCC Bank, Karki
Tq:Honnavar.
- 5(e) Ramakrishna Narayan Patgar,
Aged about 44 years,
Occ:Ryot, R/o: Gudeangadi,
Tq:Kumta

(D.1(a) to 1(e) by Sri S.V.Adi Advocate)
(D. 2 to 5(e) by absent)

ORDER

This is an application filed by the applicant under order 20, rule 18(1) r/w Sec. 54 of CPC praying to draw up the final decree.

2. This final decree proceeding arises out of a Judgment and decree in O.S.No.85/1982 passed by this Court. The



petitioner was the plaintiff in the original suit. The judgment and decree in O.S.No.85/1982 was modified by the orders of Appellate Court in R.A.No. 69/2006. As per the appellate court order the petitioner herein was held to be entitled to 1/5th share in the suit schedule properties item No.1 to 3, and 5 to 30 and also she is held entitled to her share in Sy.No.98 to 172, the gajani lands of Gudeangadi village in Kumta taluka to the extent of 2 ½ hasagi. It is further held that in respect of item No.3, 23 to 30 the petitioner is entitled for partition in the possessory rights only. The petitioner contends that the Regular second Appeal filed by the respondents is dismissed and at present there is no stay to draw up final decree. Hence the present petition.

3. Upon filing of the petition notice was issued to the respondents. The respondents no.2 and 3 appeared and submitted their no objection. The remaining respondents have not filed their objections. As per order dated 17-12-2011 Tahasildar of Kumta was appointed as the Court commissioner to suggest the scheme of partition. He has filed his report on 16-07-2012 before this Court. In the said report it is forthcoming that the respondents have not cooperated for the commission work. Instead they have



informed the Court commissioner that the matter is stayed in R.S.A.No.5064/2011 on the file of the Hon'ble High Court of Karnataka.

4. During the course of proceeding the petitioner expired and in her place her L.R. has been impleaded. Further respondent no.1, 4 and 5 also expired, and in their place their respective LR's have been impleaded. For the sake of convenience the parties shall be addressed in their original ranks only.

5. The petitioner has submitted no objection to the commission report. The respondent no.1(a) to 1(e) have filed their objections to the Commissioner Report, wherein they have contended that the report is not as per the preliminary decree; the surveyor ought to have had bifurcated the share of respondents; and the petitioner is allotted valuable share etc. Hence prayed to reject the commission report.

6. Upon perusal of the objection filed by the respondents, this Court directed them to take out summons to the Court Commissioner. On 19-09-2018 the learned counsel for the respondent Sri. S.V. Adi submitted that the objection filed by



his clients is formal in nature and there is no need to examine the Court Commissioner.

7. Heard learned counsel for the petitioner and respondent no.1. The respondent no.2 and 3 did not advance their argument. Perused entire case record.

8. The following points arise for my consideration.

POINTS

1. Whether the scheme of partition suggested by the Court Commissioner is proper and viable?

2. Whether the application seeking partition by metes and bounds and separate possession deserves to be allowed.

3. What order?

9. My finding to the above points for consideration is as follows

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : As per final order for the following:



REASONS

10. Point No. 1 and 2:- The respondents herein who were the defendants in O.S.No.85/1982 have been contending that they had preferred RSA no. 5064/2011 before the Hon'ble High Court of Karnataka. In fact under the pretext that the present proceeding is stayed in the said appeal, matter was adjourned continuously. On 19-07-2018 Ld counsel for petitioner filed certified copy of the order in RSA No. 5064/2011. It is in that the said second appeal was disposed off on 07-04-2015 itself. Hence as of now the decree in O.S.no.85/1982 as modified in R.A. No. 68/2006 is not stayed and there is nothing to incapacitate this Court from drawing the final decree. The respondent No.1 cannot hold back this Court from proceeding without obtaining an order of Stay from the Appellate Court. It is evident that the respondent is only trying to protract the above proceeding.

11. In order to assist the Court in suggesting the scheme of partition a Court Commissioner was appointed. He has filed his detailed report. The learned counsel for the petitioner submitted his no objection for passing the final decree as per the report. The respondent No.1 filed his formal objections, but he has not preferred to either examine the Court



commissioner or challenge the report submitted by the court commissioner during his argument. The remaining respondents have not filed their objection and as such it is deemed to be treated as nil. As already stated RSA no.5064/2011 before the Hon'ble High Court of Karnataka is dismissed. Thus there is no impediment for this Court to proceed with drawing up of final decree.

12. The court commissioner's report can be treated as evidence under Order XXVI Rule 10 of CPC. On its perusal, the Court Commissioner has provisionally allotted the portions of suit property, in favour of the original plaintiff, who is now succeeded by her legal heir. The share of the defendants is not separately demarcated. It is to be noted here that in R.A. No. 68/2006 and 69/2006 only the share of plaintiff is determined. It is held that in respect of item No. 1 to 3, 5 to 30 the plaintiff is entitled for her 1/5th share. It is further observed that in respect of items No. 3, 23 to 30 the plaintiff is entitled for possessory right only.

13. On perusal of watap-takta annexed to the report, the plaintiff although was entitled for large amount of share, she has preferred to restrict her share. As such the surveyor has



not mentioned the valuation of the suit properties. In respect of properties situated at Bada village the petitioner is allotted Sy. No. 381/6 measuring 0-11-0 only. In respect of properties situated at Goodeangadai village the plaintiff is allotted Sy. No. 2/2A measuring 0-17-0 including kharab 0-1-0. Further she is allotted Sy. No. 60/3 measuring 0-23-0, Sy. No. 61/2 measuring 0-14-0, Sy. No. 76/3 measuring 0-9-0, Sy. No. 77/3 measuring 0-7-8, Sy. No. 78/1 measuring 0-1-4, Sy. No. 78/6 measuring 0-1-12, Sy. No. 207-3 measuring 0-10-0, Sy. No. 228/1 measuring 0-4-4. It is to be noted here that in respect of Sy. No. 2/2A of Gudeangadi village and Sy. No. 381/6 of Bada village, the petitioner is only entitled for possessory right of partition.

14. It is forthcoming that the 1/5th share of the petitioner would come to 3-2-8 extent. However the petitioner has limited her share to 2-17-12. Considering the fact that more than 1 acre property has been voluntarily forgiven by the petitioner, I am of the view that the provisional allotment is equitable. The respondents have not shown any reason why the commissioner report is not viable. Further the petitioners nor the respondent have made any claim for preferential allotment in the properties. Further there is nothing to show

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that the scheme suggested by the Court Commissioner is biased or causing injustice to respondent. As such there are no compelling circumstances to this Court to deviate from the scheme suggested by the Court commissioner. Therefore Point No. 1 and 2 are answered in the Affirmative.

15. Point No.3:- For the findings given to above said points for consideration, this Court proceeds to pass the following:

ORDER

The petition filed U/O.XX, Rule-18(1) R/w Sec. 54 and 151 of CPC is hereby allowed.

The report submitted by the Court Commissioner is hereby accepted. The P.T. Sheet, Vatap Takta and Survey Sketch submitted by the Court Commissioner shall form part of the final decree.

Accordingly the suit schedule properties be divided; and the petitioner no.1(a) shall be put into separate possession over the same.

Draw final decree as per preliminary decree passed in R.A. No. 68/2006, R.A. No. 69/2006 and O.S.no.85/1982.

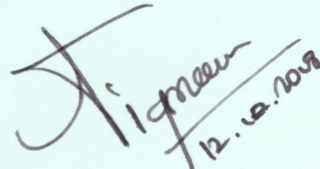
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The parties shall furnish requisite non-judicial stamps for drawing up the final decree.

It is emphasized that the petitioner is entitled for only possessory right in respect of Sy. No. 2/2A of Gudeangadi village and Sy. No. 381/6 of Bada village.

No order as to cost.

(Typed by me on the laptop provided, corrected, revised then signed by me and pronounced in the open Court on this the 12th day of October, 2018)



(Vignesh Kumar)
Civil Judge & JMFC, Kundgol.