

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM.,
KARKALA.**

Present:- Smt. Sharmila C.S., B.A.L., LL.M.,,
Senior Civil Judge & ACJM., Karkala.

Dated: This the 25th day of February, 2026.

F.D.P. NO.4/2020

1. Sri. Balakrishna Shetty,
Aged about 60 years,
S/o. Late Kalu Shetty,
Residing at Anneda Guthu House,
Mundkur Village and Post,
Karkala Taluk-574 121.

2. Smt. Indira P. Shetty,
Aged about 58 years,
D/o. Late Sri.Kalu Shetty,
Mayur Apartment, 3rd Floor, 301,
Kalya West, Mumbai-421 301.

.. Petitioners

(By Sri. M.K.Vipul Tej, Advocate)

- Vs. -

1. Smt. Shobha R. Shetty,
Aged about 56 years,
D/o. Late Sri. Kalu Shetty,

2. Smt. Harinakshi A. Shetty,
Aged about 54 years,
D/o. Late Sri. Kalu Shetty,

3. Sri. Jagadish Shetty,
Aged about 52 years,
S/o. Late Sri. Kalu Shetty,

4. Sri. Subhas Shetty,
Aged about 50 years,

- S/o. Late Sri. Kalu Shetty,
5. Miss. Shakunthala Shetty,
Aged about 48 years,
D/o. Late Sri. Kalu Shetty,
6. Smt. Shantha Shetty,
Aged about 68 years,
W/o. Late Sri. Gopala Shetty,
7. Smt. Malashri,
Aged about 55 years,
W/o. Late Purushothama Shetty,
8. Smt. Pushpa Shetty,
Aged about 55 years,
W/o. Late Purushothama Shetty,
9. Sri. Harsha P. Shetty,
Aged about 21 years,
S/o. Late Purushothama Shetty,

All the respondents are the residents of
Kattadadi Mane, Sacheripete Post,
Mundkur Village, Karkala Taluk-574 121. .. Respondents

(Respondent No.1 to 4 , 6 to 9 – Exparte

Respondent No.5 – By
Sri. Shrihari Mugeraya, Advocate)

ORDER ON LEFT OVER ISSUES NO.6 AND 7

The present petition under Order 20 Rule 18 and Section
54 and 151 of C.P.C., is filed for division of properties as per
preliminary decree in O.S.No.58/2015 dated 19-12-2019. In

the preliminary decree, Issues No.6 and 7 were left over for decision in final decree proceedings. The said issues reads as under.

Issue No.6) Whether the plaintiffs prove that defendants 4 and 5 are liable to render accounts?

Issue No.7) Whether the 5th defendant proves that she has made improvements in the property and she is entitled to equity?

2. The counsel for the respondent No.5 has filed application seeking permission to lead enquiry and also got examined the 5th respondent as R.W.1 and has produced four documents as Ex.R.1 to Ex.R.4.

3. Heard from the counsel for the petitioners and respondent No.5 . Perused the materials.

4. My findings on the above issues are

Issue No.6 – In the affirmative,

Issue No.7 – In the affirmative,
for the following;

REASONS

5. **Issue No.7:-** Respondent No.5 has filed her affidavit in lieu of her chief examination and deposes that she has made enormous agricultural improvements such as coconut and arecanut garden in the 1st item of suit 'A' schedule properties by spending hard earned money and by availing loan. That she has spent her personal money to renovate the old house situated in the 1st item of the suit 'A' schedule property and has deepened and put rings to the old well situated in the 1st item of suit 'A' schedule property and has also installed 5 H.P. electrical pump to lift the water and has spent more than Rs.25,00,000/-. That under equity, she is entitled for the allotment of portion of plaint 'A' schedule property and prays to consider the same.

6. The petitioners have objected the same by submitting that even the petitioners have also contributed for the development in the suit 'A' schedule properties . Accordingly prays for equal shares in all the properties.

7. In order to prove her allegation, R.W.1 has produced several photos pertaining to the properties , pen drive certificate under section 63(4) of Bharathiya Sakshya Adhinyam as per Ex.R.1, Ex.R.2 and Ex.R.4 respectively. She has also produced several vouchers as per Ex.R.3 for the months March and April, 2004, February, 2005, March 2010 etc. depicting that the same have been given for repair of the house . A perusal of Ex.R.3 which are the vouchers gives a note of the expenses incurred for the repair of the house including well and roof etc. At the first instance, counsel for the petitioners took up the defence that it is not only the respondent No.5 who has contributed, but it is also the petitioners who have contributed for the improvements in the suit property. In this regard it was also argued that vouchers does not depict the nature of the property , nor the name of the person who has paid the amount. However R.W.1 in her cross-examination submits that she and her sister Shobha only have paid the said amount. When there was issue casting burden upon the respondent No.5 to prove the same, there was heavy burden

upon her to prove the same by cogent documents. It would be pertinent to note that Ex.R.3 consists of several vouchers, which are issued by some P.W.D. contractor. However he is not examined. The receipts are bearing No.305, 309 dated 09-04-2004, 19-05-2004. The further receipts bearing No.313, 314, 315 are dated 01-02-2005, 15-02-2005 and 25-02-2005, the receipt bearing No.323 is dated 03-03-2010. Counsel for petitioner submits that the said vouchers were created, where the voucher receipt bearing No.323 which is dated 03-03-2010 i.e., nearly five years after issuance of receipt bearing No.305, where there is only difference of 8 receipts. Even otherwise, the respondent No.5 has not produced any other material to show that she had sufficient income and has spent her income upon the suit schedule property to effect improvements and bring out repairs.

8. The counsel for the petitioners has produced copy of deposition of defendant No.5/R W 1 who is examined as D.W.1 in the original suit. During her chief examination, she has deposed that the suit schedule properties are uncultivable lands

which are kept fallow due to lack of irrigational facility and due to disturbance of wild monkeys and wild boar and fetches no income. She has further deposed that “without prejudice to the above contention, that she has made enormous agricultural improvements by spending hard earned money and by availing loan etc.” However in the cross-examination she admits that she has no document to show that she has improved the suit schedule properties. The evidence was recorded on 14-10-2019, which gives rise to the inference that Ex.R.3 are created and submitted where there are different receipts in particular to the receipt number and the date of issuance of said receipts/vouchers.

9. During the course of cross-examination, this D.W.1/R.W.1 has further admitted that she is enjoying the income derived from the suit schedule property, since she is in possession of the same. She has further deposed that there are 300 arecanut trees and 15 – 20 coconut trees and total extent of property is 23.50 acres. That the paddy is grown only once in a year and denies that she is earning income of Rs.50,000/- per

annum after deduction of the expenses and her personal expenses. Apart from this, there is nothing on record from the evidence of D.W.1. Further the perusal of cross-examination of P.W.1/petitioner is required, wherein P.W.1 was suggested that after the death of their mother and till 2004, their brother Purushotham was cultivating the property, which means that the respondent No.5 is also admitting that the property was cultivated jointly by the brother of the petitioner by name Purushotham.

10. At this stage it was argued by the counsel for the respondent No.5 that respondent No.5 is only claiming equity with equal shares, wherein respondent No.5 is unmarried and all the other parties have been residing elsewhere. It was also urged that when there is no family for the respondent No.5, if she is dispossessed from the house, there is no other property for the respondent No.5 to live in and she will be thrown to the street. Merely stating that the petitioners have also spent for effecting the improvement, does not prove that the petitioners have also contributed for the improvements. By cross-

examination of R.W.1, counsel for the petitioners much argues on the possession of the respondent No.5 in the suit schedule property. When the petitioners have also claimed that they have also contributed for the improvements, the petitioners ought to have produced some documents in support of their claim. When such is the case, the only fact that has to be concluded is that the respondent No.5 is in possession and enjoyment of house situated in the suit schedule property. When there is no document either by the petitioners or the 5th respondent to show their contribution towards the repair of the house or towards deepening of the well or for planting of coconut and arecanut plants and other improvements, the court has to believe that the person who is in possession and enjoyment of the same, has effected all such improvements, may be with assistance of others. The preponderance of probabilities tilts in favour of respondent No.5 at this stage.

11. When the petitioners and other respondents are residing outside the suit properties, no hardship will be caused if the house property situated in 1st item of suit property is

allotted to the share of respondent No.5 who is unmarried and has been in possession and enjoyment of the same since the beginning. Therefore she would be entitled for equity while partitioning the property and for allotment of house and the land surrounding the house property. Accordingly Issue No.7 is answered in affirmative.

12. **Issue No.6:-** The plaintiffs/petitioners submit that the defendants No.4 and 5 are liable to render accounts. As per the respondents/defendants No.4 and 5 , they are in possession and enjoyment of the property and have cultivated the arecanut and coconut trees in the suit property and also growing paddy. D.W.1/R.W.1 has submitted that she is enjoying the fruits of the suit properties , but submits that she is not getting any additional income from the suit properties. She also denies that she is earning Rs.50,000/- income per year in addition after deducting the expenses for cultivation and personal expenses. When the total extent of suit properties is 23.50 acres, the court cannot believe that the person who is in possession and enjoyment of the such property, is getting the meager income

which is only sufficient for their living. Accordingly defendants/respondents No.4 and 5 who are in possession of the suit properties and enjoying the benefits, are liable to render accounts. Accordingly Issue No.6 is answered in affirmative.

13. In view of the above said reasonings, I proceed to pass the following

ORDER

The defendants/respondents No.4 and 5 are directed to render proper accounts with respect to the yieldings in the suit properties.

The defendant/respondent No.5 is entitled for allotment of share under equity including the house and the land surrounding the house property situated in the 1st item of suit properties.

(Dictated to the stenographer directly on the computer, corrected and then pronounced by me in open court, on this the 25th day of February, 2026.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala.

ANNEXURE**List of witness examined on behalf of petitioners:-**

- None -

List of documents marked on behalf of petitioners:-

- Nil -

List of witness examined on behalf of respondents:-

R.W.1 - Shakunthala

List of documents marked on behalf of respondents:-

Ex.R.1 - Photos

Ex.R.2 - Pendrive

Ex.R.3 – Vouchers

Ex.R.4 – Certificate U/s 63(4)(c) of B S A

Senior Civil Judge & ACJM,
Karkala.