

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

**KARKALA**

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

Dated: This the 5<sup>th</sup> day of April, 2024.

***F.D.P.No.13/2020***

1. Smt. Sujatha,  
Aged about 56 years,  
D/o. Smt. Chindu Bai,

2. Sri. Shreepathi,  
Aged about 30 years,  
S/o. Smt . Sujatha,

3. Suprabha,  
Aged 26 years,  
D/o. Smt. Sujatha,

“Srinivas”, Kanangi, Hirgana Village,  
Karkala Taluk, Udupi District.  
2 and 3 are represented by their  
Mother and G.P.A. Holder, Smt. Sujatha,

Smt. Chindu (deceased - 1<sup>st</sup> defendant)

4. Sri. Shivaramachandra K.,  
Aged about 66 years,  
S/o. Late Smt. Chindu Bai,  
Sourabha, D.No.4-209/7,  
Vishwasnagar, Next to Shakthi Nagar,  
Hebri Road, Jodurasthe,  
Hirgana-576 117.

5. Smt. Shakunthala,  
Aged about 63 years,

D/o. Smt. Chindu Bai,  
Basrikatte, Honnagudi, Koppa,  
Chickmagalore-577 114.

6. Sri. Lakshmikanth,  
Aged about 35 years,  
S/o. Smt. Shakunthala,  
Represented by mother and G.P.A.  
Holder Smt. Shakunthala,
7. Sri. Sureshchandra K.,  
Aged about 61 years,  
S/o. Late Smt. Chindu Bai,  
Sapthagiri Srinivasa Krupa Kanangi,  
Hirgana Village and Post,  
Karkala taluk.  
Represented by his brother and  
G.P.A. holder Sri. K. Shivaramachandra.
8. Sri. Sathischandra K,  
aged about 58 years,  
S/o. Late Smt. Chindu Bai.  
Sapthagiri Srinivasa Krupa Kanangi,  
Hirgana village and post, Karkala taluk,  
Represented by his brother  
and G.P.A. holder Sri. K. Shivaramachandra.
9. Sri. Dineshchandra K,  
aged about 57 years,  
S/o. Late Smt. Chindu Bai,  
Sapthagiri Srinivasa Krupa Kanagi,  
Hirgana village and post, Karkala taluk.  
Represented by his brother and G.P.A.  
Holder Sri. K. Shivaramachandra.
10. Smt. Sarvani,  
aged about 55 years,  
D/o. Late Smt. Chindu Bai.  
"Srinivas Kripa", Kanangi, Hirgana  
Village, Karkala taluk, Udupi district.

11. Anusha, aged 24 years,
12. Gururaj, aged about 18 years.

**11 & 12 are the children of Smt. Sarvani.**

11 & 12 are represented by their  
G.P.A. holder, mother Smt. Sarvani.  
And are residing at Flat No. 7732,  
197/A Vainatey CHS Ltd., Kannamwar  
Nagar 2, Opp: Vikhroli Court.  
Vikhroli East: Mumbai – 400 083

13. Smt. Rathi,  
W/o. Late Krishna K.  
aged about 76 years,  
Srinivas Kripa, Kanangi,  
Hirgana, Karkala taluk – 576 117.
14. Smt. Shailaja  
aged about 52 years,  
W/o. Ananda N.  
Antara House”, Chibidre, Kakkinje,  
Belthangady taluk.
15. Smt. Bhanumathi K,  
aged about 47 years,  
349, Bannadka, Moorur,  
Hirgana, Karkala taluk – 576 117.
16. Sri. Prakash,  
aged about 46 years,  
Anupritha CHS, RM 105, B-Wing,  
Room No. 16, Near Mamtha Hospital  
MIDC, Dombivili East, Thane-421 201,  
Maharashtra.
17. Sri. Pradeep K,  
aged about 45 years.

S/o. Krishna K.  
Srinivas Kripa, Kanangi,  
Hirgana, Karkala taluk-576 117.

18. Sri. Prasanna k  
aged about 43 years.  
S/o. Krishna K.,  
3-57, Srinivasa Kripa Kanangi,  
Hirgana, Karkala – 576 117.
19. Smt. Manjula,  
aged about 40 years,  
W/o Bhaskar Poojari,  
Near Shiv Temple, Amamagar, Chanod, Vapi,  
Ardi, Valsad, Gujrath-396195.

14 to 19 are the children of Late Sri. Krishna K.  
No. 13, 14, 15 and 17, 18 and 19 are  
represented by their G.P.A. holder  
Mr. Prakash, 16<sup>th</sup> petitioner.

**Sri. H. Shivanna(deceased-18th defendant)**

20. Smt. Sunanda,  
Aged about 76 years,  
W/o. Late H. Shivanna  
Srinivasa Krupa Kanangi,  
Hirgana village and post, Karkala taluk.  
Represented by her brother and G.P.A.  
Holder Smt. Shashikanth
21. Smt. Snehalatha,  
Aged about 60 years.  
Sourabha, D.No. 4-209/7  
Vishwasnagar, Next to Shakthi Nagar,  
Hebri road, Joduraste, Hirgana-576 117.
22. Sri. Shashikanth,  
Aged about 57 years.  
Sri Nivasa, Angadibettu,

Near Adhishakthi Rice Mill, Hirgana post,  
Karkala taluk- 576 117.

23. Smt. Sumalatha,  
Aged about 51 years.  
W/o. Krishna,  
Sapthagiri Srinivasa Krupa Kanangi,  
Hirgana village and post, Karkala taluk.  
Represented by her brother and G.P.A.  
Holder Smt. Shashikanth
24. Sri. Sharath,  
Aged about 48 years.  
Residing at 3-335, Kukkundoor village,  
Karkala taluk, Udupi district.  
Represented by her brother and G.P.A.  
Holder Smt. Shashikanth.
- 21 to 24 are the children of Late H. Shivanna.**
25. Sri. K. Sheena (since deceased),  
Aged about 83 years,  
S/o. Late Koosu Poojarthi.  
2-188, Hekyarottu House,  
Valpady Village and post,  
Moodabidri taluk, D.K.
- (a) Mrs. Sunanda,  
Aged about 76 years,  
W/o. Late K. Sheena Poojary.
- (b) Mrs. K. Malini,  
Aged about 53 years.
- (c) Mrs. Suvasini,  
Aged about 51 years.
- (d) Mr. Praveen Bhat,  
Aged about 49 years.
- (e) Mr. Prashanth Kumar,



i.	Provision under which the application is filed	Order 18 Rule 18 of CPC
ii.	Relief sought for	To hold local inspection
iii	The date on which the application is filed	29-01-2024
iv	Number of the application	I.A.No.6
v	The date on which the objections are filed by different opponents	07-02-2024
vi	The date on which the orders were passed on the said application.	05-04-2024

**ORDER ON I.A.NO.6 UNDER ORDER 18 RULES 18 OF  
C.P.C.**

Application is filed by the respondent seeking the court to hold local inspection of the suit property, in order to decide I.A.No.V.

2. The respondent has deposed that Srinivasa Temple is existing in the suit property. That the petitioners with a malafide intention have suppressed the existence of the temple. Thus for the better appreciation of the relevant evidence available, prays to allow the application.

3. Per contra, counsel for the petitioners objected denying the entire deposition of the respondent and submits that the local inspection is not at all warranted to decide the final decree proceedings. Thus prays to dismiss the application.

4. Heard from the counsels for petitioners and respondent.

5. The following points arise for my determination.

“Whether the local inspection of the property by this court is necessary?”

6. My answers to the above point is in negative, for the following-

### **REASONS**

7. The respondent in the affidavit annexed to the application has deposed that there is Srinivasa Temple existing in the suit property and the said temple was founded by his Guru , the defendant No.20 in the suit, and adopted him as disciple by giving priestly 'Deeksha' in his childhood to perform pooja to the deities. That he has been performing daily pooja of

the temple and also all the religious rituals, ceremonies and periodical and annual rituals and Utsavas. That he has been performing pooja as an Archaka of the temple, maintaining and managing the temple for about 15 years and the petitioners never took any care to maintain the temple or its poojas. That the petitioners deliberately and with a malafide intention suppressed the existence of the temple in the suit property and throughout the proceeding. Therefore, the decree being silent about the temple and there is no direction in the decree as to the temple and its allotment or management. That only after the visit of the court commissioner to the suit property during the survey measurement, the temple building, and its annex buildings and all other appurtenances, which are part and parcel of the temple are located, and reported by the commissioner in a separate schedule, shown as 1<sup>st</sup> schedule to the report. The said schedule contains a vast land area of 2.27 acres with buildings etc. That after the submission of the report, the petitioners are claiming the said temple, temple land and its assets and appurtenances for their share, by excluding him.

Further deposed that Hon'ble High Court of Karnataka in its order dated 07-06-2023 in W.P. No.7118/2023 (GM-CPC) has observed that the respondent being the sharer in the suit property, has right even in the suit temple and annex building i.e., in the schedule 'A' of the division report only to the extent of 1/6th in 1/18th share of his father. Thus he has filed an application , I.A.No.V to pass appropriate order as per the order of High court. Since the temple and its premises with annex building and appurtenances is not divisible property and is meant for common worship, he has also filed a memo for joint allotment of the 1<sup>st</sup> schedule property of the report. That he has already placed considerable amount of evidence . That the petitioners are objecting all his applications and claims with a malafide intention to oust the respondent from the temple and cause him injustice. Thus for the better appreciation of the relevant evidence, it is just and necessary for the court to hold local inspection of the suit property and inspect the temple and its precincts with all relevant things and matters which would help the court to decide the case effectively.

8. The claim of the respondent is mainly to allot the temple in his favour. Therefore the contention taken up is 'non noting of existence of the temple in the suit property, which covers a vast area of 2.27 acres.' But on careful perusal of the judgment and decree passed by this court along with the plaint averments, this court can clearly infer regarding the noting of Kanangi Srinivasa Temple in the plaint 'A' schedule property, where the plaintiff has alleged that it was built by the 20<sup>th</sup> defendant in the said suit i.e., O.S.No.18/2009. Thus the petitioners submit that it is the family temple and they are entitled for equal share. Further it is also brought out to the notice of the court that in the affidavit filed along with the final decree petition, note of the temple is also made. Therefore, when the petitioners/plaintiffs have clearly urged regarding the existence of the temple in the suit property, this contention of the respondent does not hold any water.

9. It was also brought out to the notice of this court that a memo was filed by the respondent on 09-01-2023, where the respondent corrected the calculation of shares by the

commissioner with respect to 'B' schedule property, where the allotment of 0.05 acre to the share of respondent was wrong and correct share was alleged to be 0.06.75 acre. The petitioner has also filed a counter to the said memo by stating that the commissioner has allotted 0.05 acre to the respondent because of the exclusion of the area occupied by Srinivasa Temple and both the petitioners and the respondent have not pleaded for division of the property. Thus has accepted and agreed for allotment of 0.06.75 acre to the respondent and further the order of the Hon'ble high Court was also brought out to the notice of this court, where the counsel for the petitioners submits that this court cannot go beyond the direction of the Hon'ble High Court of Karnataka, which is in W.P.No.7118/2023. A perusal of the order of the Hon'ble High Court in the said writ petition, goes to show that the Hon'ble High court has held that "all the members of the family have equal right even in the suit temple, annexed building and appurtenances thereto to the extent of their share determined by the court." Further has discussed in detail regarding the

entitlement of the respondent to the suit temple, where the Hon'ble High Court of Karnataka has held that -

“Hence the contention taken by the respondent that under equity he is entitled to be allotted with along with suit temple the surrounding land with all structures, buildings, amenities and improvements to his share etc., has no legs to stand “

10. In this situation it is very much clear that the existence of the said temple in the suit property , has already been observed by the Hon'ble high Court of Karnataka , where the respondent had sought for equity in the writ petition. The petitioners have also nowhere concealed the existence of the temple in the suit property either in the original suit or in the final decree proceedings. The court commissioner can be appointed only in case of dispute regarding the measurement and regarding the dispute arising regarding non-existence of the property, which is not so in the instant case. The court commissioner has clearly formed a separate schedule with respect to the temple. In this situation, when the proper evidence is brought out before this court, it is unnecessary that the court has to visit the said spot, which will not be of any use.

Order 18 Rule 18 of C.P.C. is a provision enabling the court to come to the proper conclusion , wherein there is a dispute with regard to non-existence of the property and has to be applied only in the rarest of rare circumstances. The visit to the suit property by this court will serve no purpose but may cause prejudice in favour of any particular party. Therefore, when all the materials and proper evidence is brought before this court and the court is bound to follow the order passed by the Hon'ble High Court of Karnataka, this court cannot go and exceed its limit in visiting the suit schedule property . Accordingly the above point is answered in negative.

11. In view of the above reasoning, I proceed to pass the following :

**ORDER**

I.A.No.6 filed by the applicant/respondent under Order 18 Rule 18 of C.P.C. is here with rejected.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 5<sup>th</sup> day of April, 2024.)

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