

KAUP200004472020



**IN THE COURT OF
SENIOR CIVIL JUDGE AND ACJM AT KARKALA,UDUPI
Presided Over by Smt. Sharmila C.S., B.A.L., LL.M.,**

Dated: This the 6th day of March, 2026.

F.D.P NO.13 OF 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 - 1st 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 Kanangi,
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 Poojary,
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, 16th 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.

25 (a) Mrs. Sunanda,
Aged about 76 years,
W/o. Late K. Sheena Poojary.

25 (b) Mrs. K. Malini,
Aged about 53 years.

26 (c) Mrs. Suvasini,
Aged about 51 years.

27 (d) Mr. Praveen Bhat,
Aged about 49 years.

(e) Mr. Prashanth Kumar,
Aged about 47 years.

Petitioners 25(b) to 25(e) are the children of
Late K. Sheena Poojary
25(a) to 25(e) are residing at
“Hekyarottu House”,
Valpady village and post,
Moodabidri taluk, D.K. district.

Sri.K.Mahabala (deceased-20th defendant)

26. Sri. K Vittala,
aged about 76 years,
S/o. Late Smt. Koosu Poojarthi.



Mathru Kripa House,
Durga, Tellar, Karkala taluk,
Udupi district-576 117. ` ...Petitioners

(Petitioners No.1 to 24, 25(a) to (e), 26 -
By Sri. M.K.Vipul Tej, Advocate

Petitioner No.25 - Dead)

- Vs. -

Sri. Shrikanth
Aged about 54 years,
S/o.late H. Shivanna
Sri Nivasa, Angadibettu,
Near Adhishakthi Rice Mill,
Hirgana post, Karkala taluk-576 117. ...Respondent

(By Sri.P. Sugandh Kumar, Advocate)

ORDER

This is a petition filed by the petitioners under Order XX Rule 18 and Section 54 of Code of Civil Procedure praying to pass a final decree for partition after dividing the plaint 'A' schedule properties into 768 fair and equal shares by metes and bounds with reference to good and bad soil, value, income nature and equity through court commissioner with the



assistance of surveyor and allotment and delivery of 760/768 shares jointly to the petitioners and 8/768 shares to the respondent and in the event of the practical difficulty of allotting the fractional share to the respondent by granting the value of his share by way of owelty.

2. It is stated in the petition that after passing of the preliminary decree the 1st defendant Smt. Chindu Bai passed away leaving behind her children who are parties to the petition as her heirs. The 20th defendant Sri. Mahabala died, he was not married and he had no issues, therefore his brothers and sisters have succeeded him. The 18th defendant H. Shivanna died leaving behind his widow and children as his legal heirs respectively. The 20th petitioner is his widow and petitioners No.21 to 24 and the respondent are his heirs, they are together entitled to 1/16th share in the suit property.

3. Respondent has entered appearance through his counsel and filed objection contending that he is one of the



legal heir of defendant No.18 Late H. Shivanna. The other legal heirs are shown as petitioners 20 to 24 in the petition. The defendant No.20 in the suit who was popularly known as Sri. Guruji was maintaining and protecting the entire suit properties during his life time. He entered spiritual life and founded Sri. Srinivasa Temple, Kanangi in the suit properties which became Shree Kshethra Kanangi in and around the locality attracting devotees. He attained 'Deeksha' or spiritual attainment under his spiritual Guru for the purpose of establishing the said temple and dedicated himself to the religious cause of worshiping the deity Lord Shrinivasa and performing poojas in the temple. Accordingly he developed and improved the said temple and made it a religious center. The entire suit property was dedicated to the said religious cause with consent of all the parties to the suit. That when the petitioners turned hostile and filed the above suit for partition by ignoring the said cause, deeply worried and pained Sri. Guruji (20th defendant) left the suit properties by giving Deeksha to this respondent and by



handing over the possession and management of the temple as well as the suit properties to the respondent. As Deeksha holder and priest of Sri.Shrinivasa Temple, the respondent has been performing pooja and religious rituals of the temple and also managing the temple. The respondent is known as Shrikanth Bhat or priest of the temple. He has been residing in the temple annex premises with his family and performing poojas along with Sri. Guruji for the last 40 years. Since the respondent has taken Deeksha of performance of pooja of the deity and temple management and he has no other avocation, he is entitled to perform pooja, to reside in the temple premises meant for him and manage the temple to continue the tradition and wishes of Sri. Guruji as his disciple. Therefor respondent is entitled to equity.

4. On the basis of the petition filed by the petitioners, this court vide order dated 16-08-2021 appointed an advocate commissioner to divide the properties by metes and bounds as per preliminary decree in O. S. No 18/2009 dated 02-08-2010



with the assistance of surveyor attached to the ADLR Office Karkala and to submit report and to allot shares to the parties.

5. The court commissioner on 16-03-2022 filed his commission report. Learned counsel for petitioner submitted that they have no objection to commission report . Learned counsel for the respondent filed objection.

6. The sole respondent took up the contention that the extent provided to him by virtue of the commissioner's report which is to an extent of 0.05 acre is not proper. Further has filed a memo on 09-01-2023 in this regard stating that his correct share is 0.06.75 acre . The respondent further submits that out of total extent of 7.29 acres, he was to be allotted with 1/6th share out of 1/18th share of his father, tuning to 0.06.75 acre. Thus has objected that the commissioner's report cannot be accepted.



7. The counsel for the petitioners filed a memo on 10-01-2023 and submitted no objection to allot 0.06.75 acre to the respondent instead of 0.05 acre.

8. The court commissioner was examined as C.W.1. Ex.C.1 to Ex.C.3 are marked. Ex.R.1 to Ex.R.11 are marked during the cross of C.W.1.

9. Heard from the counsel for the petitioners and respondent . Perused the materials.

10. Now the points that arise for my consideration are,
- 1) Whether the commissioner's division report needs to be accepted ?
 - 2) What Order?

11. My answers to the above points are as here under.

Point No.1 – Does not arise for consideration,

Point No. 2 – As per the final order,
for the following;



REASONS

13. **Point No.1:-** At this stage, it is to be noted that the commissioner's report was accepted by this court vide order dated 21-01-2023, wherein I.A.No.3 filed by the respondent to set aside the commissioner's report was rejected by my learned predecessor. In the said order dated 21-01-2023 it was observed by my learned predecessor as under:

“Nowhere, the 18th defendant in O.S.No.18/2009 has taken the contention that his son i.e., respondent is in possession of suit temple , annexed building or managing the temple and offering pooja in temple and he is residing with his family members. That when he has not taken up any contention, now the respondent cannot take up the said defence.”

Further the same argument was also advanced before this court while hearing on the commissioner's report. It is also pertinent to note that the respondent has challenged the said order before the Hon'ble High Court of Karnataka in W.P. No.



7118/2023, where the writ petition came to be dismissed by confirming the order of this court.

14. Even after the disposal of the writ petition before the Hon'ble High Court, the respondent again and again is trying to set aside the commissioner's report and seeks share of 0.06.75 acre in the property and submits that still respondent is the Archaka of the temple and seeks the said share beside the temple, which is noted in the 'A' schedule of the commissioner's report.

15. At this stage, the commissioner's report needs to be perused, where the court commissioner has kept 'A' schedule reserved for the temple, which is running in 2.27 ½ acre of the suit property. The father of this respondent was the 18th defendant in the original suit, who died during the pendency and left behind the petitioners No.20 to 24 and this respondent as the legal representative. Except the respondent, none of the other petitioners are claiming division of the property and are accepting for allotment of 'A' schedule kept for the temple and



its surrounding places to be enjoyed jointly by all the petitioners and the respondent. As rightly observed by my learned predecessor, where there is no evidence by the original 18th defendant, the father of this respondent that his son or he was the archaka of the said temple and is in possession and enjoyment of the surrounding places of the temple, the legal representatives cannot take up the said defence. However, the commissioner's report is already accepted by the court, which also has been confirmed vide order of Hon'ble High Court of Karnataka and has not been challenged before the appellate court. Therefore, at this stage, when the commissioner's report is accepted, all the defences raised by the respondent cannot be considered. This court is only accepting the commissioner's report and held that the respondent is entitled for 0.05 acre of land allotted in 'B' schedule in 2nd schedule in the commissioner's report. Though the petitioners have submitted that they have no objection to allow 0.06.75 acre of land to the respondent, this court cannot now refer back the report to the



court commissioner and direct him to divide the property again, which would lead to multiplicity of proceedings and causes delay and nothing else. Therefore, when the commissioner's report is accepted, this court only has to draw the final decree as per the commissioner's report, where the petitioners are claiming the possession of the property jointly. Therefore Point No.1 is answered accordingly.

16. **Point No 2** : In view of the above said reasonings, I proceed to pass the following

ORDER

The petition filed by the petitioners under Order XX Rule 18 and Section 54 and 151 of Code of Civil Procedure is allowed.

The 1st schedule property shown in the commissioner's division report, is allotted to the joint share of petitioners and respondent .



The A schedule of the 2nd schedule of the commissioner's division report, is allotted to the joint share of the petitioners.

'B' schedule of the 2nd Schedule property shown in the commissioner's division report, is allotted to the share of respondent.

Ex.C.1 – commissioner's report and Ex.C.2 – sketch shall form part of final decree.

Draw Final Decree after the parties paying the necessary non-judicial stamp papers.

(Dictated to the stenographer directly on the computer, corrected and then pronounced by me in open court, on this the 6th day of March, 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:-

- None -

List of documents marked on behalf of respondents:-

Ex.R.1 to

Ex.R.10 – Photos

Ex.R.11 – Photocopy of Trust Deed dated 16-01-2020

List of witness examined for court:-

C.W.1 – Sampath Kumar Shetty N.,

List of documents marked for court:-

Ex.C.1 – Commissioner’s report ..16-03-2022

Ex.C.2 – Sketch

Ex.C.3 – O/c. Of notice ..20-09-2021

Ex.P.3(a) – Postal receipt --

Ex.P.3(b) – Postal acknowledgment -

Senior Civil Judge & ACJM,
Karkala.