

**IN THE COURT OF THE PRL.CIVIL JUDGE AND
JMFC., KARKALA**

Present: Smt. Poornima N.Pai, B.Com., LL.B.,
Prl. Civil Judge and J.M.F.C., Karkala.

FINAL DECREE PROCEEDINGS NO. 7/2011
(O.S.No. 349/1992)

Dated this the 28th Day of January, 2016.

Between:

1. Sri. Subbayya Poojary,
aged about 69 years,
S/o. late Gudda Poojary,
residing at S.N. Compound,
Hiriangady, Anekere,
Karkala Taluk, Udupi District.
2. Sri. Raju Gudda Poojary(since deceased)
 - (a). Smt. Vasanthi, aged 60 years.
W/o. late Raju Gudda Poojary.
 - (b). Smt. Shambhavi,
aged about 45 years.
 - (c). Smt. Revathi,
aged about 43 years.
 - (d). Smt. Baby,
aged about 41 years.
 - (e). Smt. Geetha,
aged about 39 years.

- (f). Sri. Karunakara,
aged about 30 years.

No.2(b) to (f) are the children of
late Raju Gudda Poojary,
All are residing at Keremail House,
Athikaribettu Village,
Mangalore Taluk, D.K.

3. Sri. Deju Poojary(since deceased)
S/o late Gudda Poojary,
aged about 82 years.

3(a). Smt. Baby Poojary, aged about 48 years.

3(b). Sri. Shankar Poojary, aged about 42 years.

3(c). Sri. Vittal Poojary, aged about 38 years.

3(d). Smt. Geetha Poojary, aged about 35 years.

3(e). Sri. Jagadish Poojary, aged about 32 years.

3(a) to 3(e) are children of late Sri. Deju Poojary
and are residing at Royi, Darkasth Mane,
Nitte Village, Karkala Taluk, Udupi District.

4. Smt. Padmu Poojarthi,
aged about 65 years.
D/o late Gudda Poojary.

Petitioners 3 to 4 are residing
at Royi, Darkasth Mane,
Nitte Village, Karkala Taluk,
Udupi District.

.. Petitioners.

(Petitioner No.2(a) to 2(f), 3(a) to 3(e) & 4: By
Sri. M.K.V.K., Adv.)

And:

1. Smt. Kollu Poojarthi,
aged about 77 years,
D/o late Gudda Poojary,
residing at Rayi Darkast House,
Nitte Village and Post,
Karkala Taluk, Udupi District.
2. Smt. Appi Poojarthi,(since deceased)
D/o. late Gudda Poojary.
- 2(a). Sri. Karunakara Poojary,
aged about 52 years,
S/o. late Appi Poojarthi,
residing at Kemannu,
Nitte Village, Karkala Taluk.
- (b). Smt. Jayanthi Poojarthi,
aged about 39 years,
D/o. late Appi Poojarthi,
residing at Kambalaguthu House,
Santhoor Village and Post,
Udupi Taluk.
- (c). Smt. Indira Poojarthi,
aged about 36 years,
D/o. late Appi Poojarthi,
residing at Kemannu,
Nitte Village, Karkala Taluk.
- (d). Sri. Ashok Poojary,
aged about 34 years,

S/o. late Appi Poojarthi,
residing at Kambalaguthu House,
Santhoor Village and Post,
Udupi Taluk.

..Respondents

(Respondent No.1: By Sri. H.S.M., Adv.;
Respondent No.2(a) : By Sri. S.M.K., Adv.;
Respondent No.2(b) to (d) Absent.)

**Order on Petition U/Or. XX Rule 18 & Sec. 54 and 151 of
CPC**

The present petition is filed by the petitioner seeking for passing of Final Decree on the basis of preliminary decree in O.S.No. 349/1992 dated 24-06-2000 on the file of Principal Civil Judge (Jr. Dn.), Karkala and Appeal Decree in R.A.No. 575/2005 dt: 19-11-2009 on the file of the court of Civil Judge (Sr.Dn) and A.C.J.M. Karkala.

2. In the annexed affidavit the petitioner Sri. Subbayya Poojary has sworn that he is the 1st petitioner and 3rd defendant in O.S. 349/1992. Petitioner No. 2(a) to (f) are wife and children of his brother Raju Gudda Poojary who was plaintiff in OS No. 349/1992. The Hon'ble Court was pleased to pass preliminary decree on 24-06-2000 in directing for partition in the plaint 'A' schedule property into six equal and fair shares between the parties and 1/6th share each to the parties. 1st Respondent preferred appeal in

RA No. 575/2005 before Addl. Civil Judge (Sr. Dvn) and ACJM, Karkala. The appeal was dismissed by the appellate court by order dt: 19-11-2009. Hence, the present petition is filed for dividing the properties into six shares by metes and bounds through court commissioner with the assistance of Surveyor and to allot 1/6th share to the petitioners. The petition schedule properties are liable to be divided by metes and bounds in accordance with the preliminary decree by appointing an advocate commissioner. He has sought for one such share in his favour and one each share in favour of the petitioners 3, 4 and first respondent and one share together in favour of the petitioners 2(a) to 2(f) and one share together in favour of the respondents 2(a) to 2(d) as per preliminary decree for partition.

3. The respondents appeared through counsels R1 appeared to SHM advocate. R2 died and her LR's R2(a) appeared through SMK advocate. R2(b) to (d) remained absent.

4. The 1st respondent filed objection stating that he has already challenged the order in RA No. 575/2005 by preferring RSA No. 568/2010 before Hon'ble High Court of Karnataka and the same is pending. The suit properties absolutely belongs to this respondent and they are not

partiable. Without prejudice any of the above contentions it is submitted that this respondent has affected valuable improvements in the suit properties by construction of house, by planting varieties of trees, by construction of Bhoothasthana and Nagara Brahmasthana. Further she has also constructed a new cow shed and stone kattahuni to bailu fields. Further she paid the premium amount of Rs. 2,000/- payable under the Karnataka Land Reforms Act. She is entitled to the said improvements. It is submitted that the land wherein the house, cow shed and other improvements situated may kindly be allotted to the share of this respondent in the event of division without considering the value of the same. It is also submitted that issue No.8 which is reserved for decision in the Final Decree proceedings may also be will have to be considered in this case. Hence he prayed to dismiss the petition.

DESCRIPTION OF THE PROPERTIES

Immovable properties situated in Nitte Village of Karkala taluk, comprised in:

S.No.	S.D.No.	Kissam	Extent A – C	Assessment Rs. P.
205	1	Punja	0-20	0-16
205	2	Nanja	0-73	4-33
205	5	Nanja	0-95	1-51

205	6	Punja	0-28	0-23
205	7	Nanja	0-28	0-67
205	8	Nanja	0-32	1-56
205	9	Nanja	0-39	1-90

The above properties with all other appurtenances thereto.

5. None of the other parties have filed objection to the main petition. Hence, court commissioner RR advocate was appointed as per order dated 30-08-2012. It is also reported to the court on 13-02-2015 that RSA No. 568/2010 was dismissed on 08-01-2015. Hence the Judgement in O.S. No. 349/1992 remained confirmed. The commissioner filed his commission report on 13-07-2015 and the case was kept for objection of parties. None of the parties filed objection on Commissioners report inspite of sufficient time granted.

6. This court ordered the petitioner and the respondents to file Memo indicating their choice of property. A memo was filed by MKVK advocate on 22-01-2016 seeking allotment as prayed in the memo. It is prayed that 'A' schedule of the commissioner's report may be allotted to the 4th petitioner and the properties mentioned in the 'B' schedule of the commissioner's report may be allotted to the share of the petitioner No. 3(a) to 3(e). 'C' schedule of the

commissioner's report may be allotted to the share of the 1st petitioner. 'D' schedule of the commissioner's report may be allotted to the share of the petitioner No. 2(a) to 2(f). 'E' schedule of the commissioner's report may be allotted to the share of the 1st respondent. 'F' schedule of the commissioner's report may be allotted to the share of the respondent No. 2(a) to 2(d). 'H' schedule of the commissioner's report may be reserved for common use as road to all the sharers. Since none of the parties have filed objection to the commissioner report, same is considered.

7. Heard both sides.

8. The points that arise for my consideration are as follows:

1. Whether the Petitioner has made out sufficient grounds for allowing the petition and allotment of 1/6th share to her as per Preliminary Decree?

2. What order?

9. My answers to the above Points are as under:

Point No.1: In the Affirmative.

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

-REASONS-

10. **Point No.1:-** The present petition is filed by the petitioner seeking for passing of Final Decree on the basis of preliminary decree in O.S.No. 349/1992 dated 24-06-2000 on the file of Principal Civil Judge (Jr. Dn.), Karkala and Appeal Decree in R.A.No. 575/2005 dt: 19-11-2009 on the file of the court of Civil Judge (Sr.Dn) and A.C.J.M. Karkala. It is also reported to the court on 13-02-2015 that RSA No. 568/2010 was dismissed on 08-01-2015. Hence the Judgement in OS No. 349/1992 remained confirmed. Sri. RR advocate was appointed as court commissioner who filed his commission report on 13-07-2015 and the case was kept for objection of parties. None of the parties filed objection on Commissioners report inspite of sufficient time granted.

11. A memo was filed by MKVK advocate on 22-01-2016 seeking allotment as prayed in the memo. It is prayed that 'A' schedule of the commissioner's report may be allotted to the 4th petitioner and the properties mentioned in the 'B' schedule of the commissioner's report may be allotted to the share of the petitioner No. 3(a) to 3(e). 'C' schedule of the commissioner's report may be allotted to the share of the 1st petitioner. 'D' schedule of the commissioner's report may be allotted to the share of the petitioner No. 2(a) to 2(f). 'E' schedule of the

commissioner's report may be allotted to the share of the 1st respondent. 'F' schedule of the commissioner's report may be allotted to the share of the respondent No. 2(a) to 2(d). 'H' schedule of the commissioner's report may be reserved for common use as road to all the sharers. Since none of the parties have filed objection to the commissioner report and memo, same is considered.

12. I have perused the commissioner report when the parties have filed a memo stating their choice of property as per their possession at the spot, the commissioner report along with the sketch is accepted. Hence, with these observations I am of the opinion that there is no impediment to pass final decree. Hence I answer Point No.1 in affirmative.

19. **Point No.2:** Upon the discussion made above, I proceed to pass the following:

-ORDER-

The petition filed by the Petitioner under Order XX Rule 18 and sections 54 and 151 of C.P.C is hereby allowed.

The Court Commissioner's report dated 13-07-2015 along with one sketch is hereby accepted.

The 'A' schedule of the commissioner's report is allotted to the 4th petitioner.

The 'B' schedule of the commissioner's report is allotted to the share of the petitioner No. 3(a) to 3(e).

The 'C' schedule of the commissioner's report is allotted to the share of the 1st petitioner.

The 'D' schedule of the commissioner's report is allotted to the share of the petitioner No. 2(a) to 2(f).

The 'E' schedule of the commissioner's report is allotted to the share of the 1st respondent.

The 'F' schedule of the commissioner's report is allotted to the share of the respondent No. 2(a) to 2(d).

The 'H' schedule of the commissioner's report is reserved for common use as road to all the sharers.

Commissioner's report dated 13-07-2015 along with sketches is to be treated as part and parcel of the final decree.

Draw Final Decree accordingly after each party furnishes non-judicial stamp regarding their shares.

(Dictated to the Typist, typed by her, corrected by me and then pronounced in the open Court on this the 28th day of January, 2016.)

(Poornima N.Pai)
Prl. Civil Judge & JMFC., Karkala.