

KABI510002792011



IN THE COURT OF CIVIL JUDGE & JMFC, AT KUDLIGI

Present: Smt. C. Mahalakshmi,

B.A.L., L.L.M.,

Civil Judge & J.M.F.C.,

F.D.P.no.12/2011

Dated this 4th day of July 2025

PETITIONER/S:- Smt. Gangamma and others

(By Sri.J.K.R. Advocate)

//Versus//

RESPONDENT/S:- Smt. Kotramma and others

(R-1 to 5 by Sri.P.P.D Adv.,)

(R-4, R-6 to 8, R-12 (a) to R12(i) by Sri.M.N.J. Adv)

(R-2(a) to R-2(c) by T.R Adv.,)

(R-7, R-9, R-13 and R-15 exparte)

PARTIES TO I.A.No.XXII

Applicants/Respondent Sharanappa since deceased by his
no.12(a) to (h) LR's R-12(a) to (h)

Versus

Opponents/Petitioners:- Smt. Gangamma and
others

: ORDER ON I. A. NO. XXII U/Order VI Rule 17
R/w Sec.151 of C.P.C filed by the
Applicants/respondents no.12(a) to (h):

1. Respondents no.12 (a) to (h) have filed I.A.No.XXII U/Order VII Rule 17 R/w Section 151 of CPC., praying to incorporate the petition schedule properties in final decree as 'C' schedule properties by way of amendment.

2. In the affidavit attached to the application it is stated that the respondent no.12 namely Sharanappa is their father who died leaving behind them as his legal heirs. The petitioner no.2 herein namely Thippeswamy has filed one more suit for partition in O.S.no.44/2022 on the file of Hon'ble Senior Civil Judge, Kudligi against legal heirs of petitioner no.1 who are arrayed as defendant no.1 to 9. In the said suit, the respondent no.12(a) to 12(h) herein are arrayed as defendant no.10 to 21. In the said suit, the respondent no.12(a) to 12(h) herein have appeared and filed written statement on 02.02.2023 seeking

dismissal of the suit and have filed counter claim seeking share in the said suit schedule properties. The said suit is pending consideration.

2(a). That the petitioners herein have deliberately have not included all the joint family properties in the previous suit O.S.no.20/2007 out of which this FDP arises, only partial properties are included in the said suit and have obtained preliminary decree dated 03.01.2011. Upon the said decree, the petitioners have filed the present petition seeking final decree.

2(b) In O.S.no.44/2022 once again the petitioner no.2 herein has filed suit for partition of remaining properties. The second suit for partition is not permissible and not maintainable in law. That as per law only one final decree is permissible, therefore, for proper and effective final decree is necessary to workout equity in allotment of shares by metes and bounds in all the joint family properties. Therefore, it is just and proper to incorporate

the remaining joint family properties in this final decree petition and to modify the preliminary decree dated 03.01.2011 by including all the joint family properties.

2(c) The petitioner no.2 in this FDP proceedings has deliberately disputed the relationship with the respondent 12(a) to (h) herein in O.S.no.44/2022. This act is highly deliberate, intentional with an intention to grab the entire properties defeating the legitimate claim of all the respondents no.12(a) to (h).

2(d) That the petitioners themselves in previous suit in O.S.no.20/2007 have annexed the genealogy of joint family. The admitted genealogy clearly discloses that one propositus Channbasappa had four sons namely Veeranagouda, Eranna, Siddappa, and Patrappa. That the respondent no.12(a) to (h) are the legal heirs representing the branch of above said third son Siddappa. Hence, from the admitted genealogy it is very clear that the respondents are together representing the branch are entitled $\frac{1}{2}$ share

in $\frac{1}{4}$ share in all the joint family properties. That the suit schedule properties in O.S.no.44/2022 were excluded in O.S.no.20/2007 and preliminary decree was obtained only in respect of partial properties as such, they are constrained to file this application to include the suit schedule property of O.S.no.44/2022 in this petition for modification of preliminary decree. The final decree petition is continuation of suit, as such inclusion and amendment of petition, modification of preliminary decree by including all the excluded properties for effective final decree is permissible in law, as such if amendment is permitted, no prejudice will be caused to the opponents. On these grounds, they prayed to allow the application.

3. The petitioner no.1 (a) to (f) have filed objection to the application and contended that the application filed by the respondent no.12 (a) to (h) is not maintainable under law and the same is liable to be dismissed. It is the contended that the application schedule properties are not

a subject matter in O.S.no.20/2007 preliminary decree based on which the FDP is filed. That the present applicant has not taken the contention of the partial partition in O.S.no.20/2007. Therefore, he shall not be permitted to take such contention to implead the present petition schedule properties in this FDP proceedings. That the family properties of respondent no.12(a) to (h) are not included in the present application. Therefore, they prayed to reject the present application.

4. Heard the counsel appearing for the parties.

Perused the documents.

5. The following points arise for my consideration:-

:POINTS:

1. Whether the applicants/respondent no.12(a) to (h) have made out ground to incorporate the suit schedule property by way of amendment?.

2. What Order?

6. My findings to the above points are as for follows:-

Point No.1 : In the Negative.
Point No.2 : As per the final order for the following:-

: REASONS :

7. Point No.1:- The present final decree proceedings is arising out of preliminary decree passed in O.S.no.20/2007. It is pertinent to note that in the said case, it was the contention of the respondent no.12 (a) to (h) that there was prior partition. However, they did not appear and provide any material in support of their contention, the suit was decreed and the 4 children of propositus ChannaBasappa were given one share each. It is pertinent to note that the father of respondent no.12 (a) to (h) were given share in the said suit. Now the respondent no.12 (a) to (h) are taking contention that in the said suit, the other family properties were not included. During the course of the arguments, the counsel for respondent no.12 (a) to (h) has argued that the plaintiffs in O.S.no.20/2007 *have included the properties fallen to the share of the respondent no.12 and got the suit decreed, whereas they*

have not included the properties fallen to their share. Therefore, the properties fallen to the share of the plaintiffs needs to be included. It is his further argument that the respondent no.12 (a) to (h) have filed counter claim in the said suit. Therefore, it is his argument that if the present final decree proceedings is allowed, the share cannot be allotted properly and that the properties cannot be divided equally. On the other hand, the opponents to the present application who are the petitioners in this proceedings have contended that the said properties are not the joint family properties.

8. When the contention of the parties is considered along with the documents placed by the both the parties, it appears that there needs to be a full fledged trial to determine whether the said properties are joint family properties or not. Therefore, the said contention cannot be determined in the present final decree proceedings as it leads to considerable delay in disposal of this proceedings. If at all the respondent no.12 (a) to (h) have their share in

the petition schedule properties, they can urge the same in the proceedings which is pending consideration in O.S.44/2022. In the preliminary decree out of which this final decree is arising, it is observed that the respondent no.12 (a) to (h) have share, they can take their share with respect to the properties involved in this final decree proceedings. Therefore, point no.1 is answered in the **Negative.**

9. Point No.2:- In view of my findings on the point no.1, I proceed to pass the following:

:O R D E R:

I.A. No.XXII filed by the applicants/respondents no.12(a) to (h) U/Order VI Rule 17 R/w Sec.151 of C.P.C. is hereby rejected.

Parties are directed to bear their own costs.

(Dictated to the stenographer, directly on computer and typed by him corrected and then pronounced by me in the open court on this **4th day of July 2025**)

(Smt. C Mahalakshmi)
Civil Judge and JMFC, Kudligi.

