

FDP No.04/2015

The applicants/respondents No.1 and 2 have filed I.A.No.V U/o XX Rule 18 R/w Sec. 151 of CPC seeking to pass a fresh preliminary decree by modifying the preliminary decree passed in O.S. No.137/2003.

2. In support of the interim application the respondent No.1 has filed his sworn affidavit. Wherein it is contended that, in O.S.No.137/2003 the share of the plaintiff No.1 and 2 is declared as together have got 1/5th share in all the suit property and further declared that, the defendant No.4 and her legal heir are not entitle to any share in any of the suit properties. The said defendant No.4 and her legal heirs have not challenged the legality and correctness of said judgment and decree, as such, the decree passed in O.S. No.137/2003 reached finality, so far as defendant No.4/Hajaratabi or her legal heir is concerned.

It is stated that, the Hon'ble High Court of Karnataka, in RFA No.2502/2006, has declare the share of the plaintiffs as 1/9th in all the suit properties, but not declared the share of the

defendant No.4/Hajaratabi or her legal heir. Hence, the share of plaintiff No.1 and 2 must be 1/9th each and share of defendant No.1 to 3 in O.S. No.137/2003 must be 2/9th each share. Hence, preliminary decree is to be modified as sought in the interim application by allowing the present application.

3. In spite of granting sufficient opportunities, the other side have not filed any objections, hence, objections to the present application are taken as not filed.

4. Heard and perused the case records and order sheet.

5. That,

////

16.03.2021, the case was advanced and the counsel for the respondent No.1 and 2 has filed I.A.No.II U/Sec. 151 of CPC and said I.A. was allowed and direction was issued to the Court commissioner to report about the share of

defendant No.2/respondent No.2. Prior to that on 25.02.2020 the I.A.No.I was heard, allowed and

Court commissioner was appointed and subsequently on 19.10.2022 this Court again directed the Court commissioner to report about the share of defendant No.2 as per order dated 25.02.2020. In this case, the defendant No.2 has filed counter claim and also paid the Court fee and in preliminary decree, there was only 1/3rd share was allotted to the plaintiff in suit land bearing Sy.No.107/2 measuring 14 acres, which was renumbered as Sy.No.107/8A measuring 05 acres, Sy.No.107/8B measuring 05 acres and Sy.No. 107/8C measuring 04 acres and house property bearing Sl.No.102 situated at village Vandal. In the body of the judgment, this Court has discussed in page No.15 that, the plaintiff and defendants No.1 and 2 have each got 1/3rd share in the suit properties. But, the preliminary decree was drawn in favour of the plaintiff alone by awarding 1/3rd share to the plaintiff in the suit property and now the defendant No.2 came up with the contention that, his 1/3rd share is to be awarded and Court commissioner be directed to effect partition and give

report of his 1/3rd share also. The counsel for the petitioner has submitted no objection to modify

decree. Satisfied with the reasons. Hence, in view of the above, I proceed to pass the following;

ORDER

The Office is hereby directed to draw modified preliminary decree in favour of the plaintiff and defendant No.2/respondent No.2 awarding 1/3rd share each in the suit schedule properties.

Draw preliminary decree accordingly as per order dated 25.02.2020 and 16.03.2021.

Addl.Sr.C.J.& J.M.F.C.
B.Bagewadi