



IN THE COURT OF THE ADDL.SENIOR CIVIL JUDGE,
AT : BASAVANA BAGEWADI

PRESENT: Sri.ISHWAR S.M
B.A.LLB., (Spl)
Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

Dated this the 13th day of October - 2025

FDP No.04/2015

PETITIONERS: Kulusumma W/o Ismailsab Karnool
and others

-Versus-

RESPONDENTS: Dastagirsab S/o Peersab Attar

I.A.No.V

**Applicant/
Respondent
No.1**

Dastagirsab S/o Peersaheb Attar,
Age: 76 years, Occ: Agriculture,
R/o: Kolhar, Dist: Vijayapura

(By Sri G.S.Chincholi, Advocate)
(By Sri S.K.Chavan, Advocate)
(By Sri Y.N.Lankenavar, Advcoate)
(By Sri A.A.Attar, Advcoate)

-Versus-

**Opponents:
Petitioners**

Kulusumma W/o Ismailsab Karnool
and others

(By Sri N.S.Kulkarni, Advocate)

i	Provision under which the application is filed	Under order XX Rule 18 R/w Sec. 151 CPC
ii	Relief sought for	With a prayer to pass fresh preliminary decree by modifying preliminary decree passed by this Court.
iii	The date on which the application is filed	18.01.2020
iv	Number of the application	09
v	The date on which the objections are filed by different opponents	10.06.2022
vi	The date on which the orders were passed on the said application	13.10.2025
vii	The application filed by	Respondent No.1
viii	Stage of the suit	For orders on I.A.No.V

(ISHWAR S.M)

Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

ORDERS ON I.A.V

The applicant/respondent No.1 has filed I.A.No.V U/o Rule 1 & 2 of CPC, praying this Court to pass fresh preliminary decree by modifying the decree passed by this Court in O.S.No.137/2003.

2. The I.A. is accompanied with affidavit, wherein the respondent No.1 has contented that, this Court in suit O.S.

No.137/2003 has declared that, the plaintiff No.1 and 2 together have got 1/5th share in all the suit property and defendant No.4 and her legal heirs are not entitle any share in any of the suit properties. Further, it is stated that, in RFA No.2502/2006, the Hon'ble High Court has declared the share of the plaintiffs as 1/9th share in the suit properties. But, the Hon'ble High Court has not declared the share of the defendant No.4/Hajaratabi or her legal heirs. Further, the married daughters are not entitle to inherit the tenanted lands. Hence, the preliminary decree is required to be modified declaring the share of the plaintiffs and the defendants in R.S.No.694 measuring 20 acres 30 guntas of Kolhar village. Further, it is stated that, the Hon'ble High Court has got every jurisdiction to pass more than one preliminary decree by modifying, altering or increasing or decreasing the share of the parties to the suit in terms of change of law existing on the date of pendency of the petition. Unless and until the Hon'ble Court pass fresh preliminary decree in terms of change of law, the plaintiffs cannot be permitted to proceed with further proceedings in this petition. As the Hon'ble High Court has not declared the share of defendant No.4 and her legal heirs who are present plaintiffs No.3 to 10 and as such petition filed by the present plaintiff No.3 to 10 needs to be dismissed with

costs. On those grounds, the plaintiffs prayed to allow I.A.No.V.

3. The defendants No.4, 5 and 7 have filed objections to I.A. Wherein it is contended that, the parties to the suit O.S. No.137/2003 are governed by Muslim law of inheritance, the daughters right cannot be taken away or cannot extinguished after the marriage. The daughters remained the family members of their father even after the marriage. It is stated that, earlier in suit O.S.No.137/2003 defence was not taken by the defendant No.1, but by the defendant No.3 that the occupancy rights were granted to the defendant No.1 and not the family of Peersab, but, this contention was rejected by the Hon'ble Court by referring Sec. 24 of Karnataka Land Reforms Act. Now, they are estopped for raising that issue in FDP proceedings. The respondent No.4,5 and 7 have also adopted the objection filed by Respondent No.6,8 to 12 by filing memo. On those grounds, prayed to reject the I.A.

4. The respondent No.6,8 to 12 have filed separate objection stating that the present application tenable under law. Hence, be rejected with cost. The respondents further contended that the respondent No.1 and 2 made some proposal for modification of preliminary decree that declaring that the

rights of plaintiffs in respect of tenanted land bearing Sy.No.652/3, 653/3, 663/2 modified holding that the plaintiffs are not entitled to share or compensation amount awarded to them. The said grounds is baseless frivolous and not tenanted law. The respondent No.1 and 2 mis-understood the principle of inheritance under muslims the admitted facts that the parties to O.S.No.137/2003 are governed by Muslima Law of inheritance. The daughters rights can't be taken away or can't be extinguished after the marriage. The daughters remained the family member of their father even after marriage. Earlier the defense was not taken by defendant No.1 but defendant No.3 taken such defense that the occupancy the rights were granted to defendant No.1 and not the family of Peersab. This contention was rejected by the Court referring Sec. 24 of K.L.R. Act. Further, it is to be noted that, in terms of preliminary decree, the share in the compensation award has already been released in favour of daughters of Peersab. So, to that extent the preliminary decreed is fully satisfied. Therefore, it is submitted that, there is nothing to be modified, or draw fresh preliminary decree in respect of above said lands.

5. The respondent No.1 and 2 sought for modification of preliminary decree to declare that, plaintiff No.1 and 2 each

1/9th and defendant No.1 to 3 have 2/9th share and defendant No.5 to 10 have 1/9th share in land Sy.No.694 measuring 20 acres 30 guntas of Kolhar village, on the ground that, this Court did not award any share to defendant No.4, so, her L.Rs are not entitled to claim the share. It is true that, no share was allotted to defendant No.4 by this Court and not appeal or cross appeal was prepared before the Hon'ble High Court against the preliminary decree in RFA No.5202/2006 by them. That, the married daughters, even after marriage of the part of family of their father under Muslim and they have defined share in the property and they are tenants in common along with brothers. Therefore, modification of preliminary decree by drawing fresh decree is uncalled for.

6. No doubt, the Court is not prevented for drawing more than one preliminary decree under exceptional circumstances, hence, in this application, the respondent No.1 and 2 have not made any legal and valid grounds to seek the fresh decree to be drawn. The Court should not act mechanically to draw fresh or more than one preliminary decree. Because, one of the party has sought for, while entertaining such kind of application, the Court has to take

into account that, whether the party, who has filed such application had taken such defence at the time of trial and the Court rejected it and that person kept quiet and did not utilize the right of appeal. So, such person cannot be allowed under law to file this type of application, which is nothing but, abuse of Court process and sole intention to protract the matter, which is pending for more than a decade. Considering all the facts and circumstances, the application be rejected with costs.

7. Heard and perused the case records

8. The following points that would arise for consideration are;

POINTS

1. *Whether the respondent No.1 has made out sufficient grounds to allow I.A.No.V*

2. *What order?*

9. My findings to the above points as under:

Point No.1 : In the Negative

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

REASONS

10. **Point No.1:** That, in this case, the respondent No.1 and 2 have sought to draw modified preliminary decree.

On the other hand, the other respondents have seriously disputed the said application.

11. That, I have gone through the original judgment and decree passed by this Court in O.S.No.137/2003, dated 22.09.2006. Wherein this Court has passed the order that;

It is ordered and decreed that, the plaintiffs together entitled for partition and separate possession of their joint 1/5th share in the land bearing Sy.No.694 measuring 20 acre 30 guntas situated at Kolhar village of B.Bagewadi Taluka, by metes and bounds. The plaintiffs are also entitled for their joint 1/5th share in the compensation amount awarded with regard to the other properties submerged under Upper Krishna Project.

The defendant No.4A to 4H are not entitled for their claim share in the suit property, as such, their claim is dismissed.

Draw preliminary decree accordingly,.

No order as to costs.

12. The said judgment and decree was challenged by the defendant No.1 to 3 in RFA No.2502/2006 before the Hon'ble High Court of Karnataka, at Kalaburagi Bench on 30.01.2012, the said First Regular Appeal was disposed-off. In the said appeal, it was ordered by the Hon'ble Appellate Court in para 6 of its judgment that;

In view of the matter, the order of the Trial Court stands modified to the following effect of their allotment of shares are concerned. In substitution, each daughter will entitle to 1/10th share and each son will entitle to double share to that of the daughter namely 2/10th share each.

Office to draw decree accordingly.

Parties to bear their own costs.

The appeal stands disposed off.

In para 5 of the judgment the Hon'ble Appellate Court also observed that;

In the table of shares under Sunni Law neither son, nor the daughters are sharers. They are only residuaries. If there are no shares, or if there are sharers, but, there is a residue left after satisfying their claims, the whole inheritance or residue as the case may be, devolves upon residuaries in the order set-forth in the annexed table. When the deceased left behind son and daughter, daughter takes as a residuary with the son. The son takes a double portion, therefore, in the instant case, there are three sons, three sons take double portion of the assets i.e. two shares. There are four daughters they take one share. Therefore, out of 10 shares, each daughter gets 1/10th share and each son gets 2/10 share as their shares.

From the said observations of both the Courts, it is clear that, in judgment and decree passed in O.S.No.137/2003,

dated 22.09.2006, this Court has allotted joint 1/5th share to the plaintiffs in land bearing Sy.No.694 measuring 20 acres 30 guntas and also awarded joint 1/5th share in the compensation amount with respect to the other properties submerged under U.K.P. Project and the claim of defendant No.4A to 4H was dismissed. But, however, in the appeal the Hon'ble Appellate Court, has modified the order of this Court and allotted 1/10th each share to the daughters and 2/10th each share to the sons. Therefore, there was already modification of the order of this Court by the appellate Court and appellate Court has granted share to the daughters as well as sons. For daughters 1/10th each share and for sons 2/10th each share in the suit properties. The said judgment and decree of the Hon'ble Appellate Court passed in RFA No.2502/2006 was not challenged by any of the parties or produced any documents to show that, the said order was challenged by any of the parties to the present proceedings, Therefore, the said RFA No.2502/2006 30.01.2012, was reached its finality and the present respondent No.1 and 2 have not at all challenged the said judgment and decree and without doing so, have come up before this Court with present application seeking drawing of another modified preliminary decree, which is not at all maintainable. Because, as rightly

contended by the other respondents, the modified preliminary decree can be drawn by the Court, more than once, if there is any changed circumstances, like change in law, or if any parties dies and the legal heirs are brought on record, or any appellate Court has modified the preliminary decree of the Trial Court. On that contingency, the preliminary decree can be modified. But, without there being any such circumstances, the present respondent No.1 and 2 have filed the present application seeking modification of the preliminary decree, even though they know that, there is the judgment and decree of the Hon'ble Court in R.F.A. That, if at all the respondent No.1 and 2, aggrieved with the said judgment and decree of the Hon'ble Appellate Court, they ought to have challenge the said judgment and decree. But, they have not done so, and came up with the present frivolous application, seeking modification of the preliminary decree of this Court, when there is judgment and decree, wherein the order of the Trial Court was modified by the Hon'ble Appellate Court, therefore, the present application of respondent No.1 and 2 in the present form is not at all maintainable. Therefore, for the forgoing reasons and discussions, my findings to ***Point No.1 is in the Negative.***

13. **Point No.2**: For the reasons said above, I proceed to pass the following;

ORDER

*I.A.No.V filed by the respondent
No.1 and 2 U/o XX Rule 18 R/w Sec. 151
of CPC is hereby rejected.*

No order as to costs.

(Typed my dictation through online by the Stenographer, script corrected, signed by me and then pronounced in the Open Court on this the 13th day of October - 2025)

(ISHWAR S.M)

Addl. Senior Civil Judge
& J.M.F.C.,B.Bagewadi