

KAVP310000722022



Presented on : 11-01-2022

Registered on : 13-01-2022

Decided on : 28-05-2025

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, AT :INDI****-PRESENT-****DEVARAJU H.R.*****B.A., LL.B.*****Additional Civil Judge & JMFC, Indi.****Dated this the 28th Day of May, 2024****F.D.P. No.3/2022****PETITIONER/S****1. Sri Anil S/o. Shanamukhappa Horapeti****V/s.****1. Shri. Sharan @ Sharanappa S/o. Shanmukhappa
Horapeti****IA.No.IV****Applicants/Proposed Respondent No.2 and 3****1. Smt. Rajeshwari W/o. Basavaraj Gidaganti,**

Age: 25 Yrs., Occ: HH work,

R/o. Nimbal, B.K. Tq: Indi, Dist: Vijayapur.

2. Smt. Minaxi @ Jayashree W/o. Mahantesh Adaki,

Age: 22 Yrs., Occ: HH work, R/o. Adakigalli,

Jorapur Peth, Vijayapur, Tq & Dist: Vijayapur.

V/s.

Opponents/Oril. Petitioner:

1. **Shri. Anil S/o. Shanamukhappa Horapeti,**
Age: 22 Yrs., Occ: Agril.,
R/o. Jambagi Tq & Dist: Vijayapur.

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(By Sri. I.S.M. Adv. for petitioner)**(By Srti. MSJ Adv. for R-1)****(By Sri. J.V.P. Adv. for applicants)**

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ORDER

This is an application filed by the applicants under Order 1 Rule 10 (2) of CPC for seeking permission to come on record as respondent No.2 and 3 in the interest of justice and equity.

2. The brief facts of the case are as under:

The proposed respondent No.2/Applicant No.1 in her affidavit annexed to this application has stated that, applicants are the daughters of Shanmukhappa S/o. Siddappa Horapeti. Their father had 2 wives by name Laxmi and Siddawwa @ Siddamma. The applicants were born through first wife of

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Shanmukhappa S/o Siddappa Horapeti. During the life time of their mother, their father Shanmukhappa had entered into 2nd marriage with Smt. Siddavva @ Siddamma. The plaintiff and defendant No.1 have colluded with each other and filed the suit in OS No.256/2015 for partition and separate possession and filed the present FDP without impleading them as parties to the suit. They are having their legitimate shares in the suit schedule property. Hence, they are the necessary parties to the present petition.

3. The applicants further submitted that, the suit properties in which the plaintiff has obtained preliminary decree in OS No.256/2015 are the joint family and coparcenary properties. The present plaintiff and defendant represented the branch of Shanmukhappa, who is their father. The present plaintiff and defendant are not the absolute owners, they have colluded with each other and obtained the decree, they being the daughters of Shanmukhappa,

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they are also entitled for 2/7th shares each in the suit schedule properties, the partition alleged to have been effected by the deceased Irasiddappa is not under the registered deed of partition nor under the Civil Court decree. In view of amendment made Section 6 of Hindu Succession Act, applicants are coparceners and they have got their legitimate shares in the suit properties. Therefore, they are claiming their legitimate shares by filing the suit in OS No.53/2023 before the Hon'ble Sr. Civil Judge and JMFC, Indi against the plaintiff, defendant and their parents.

4. The applicants further submit that, the FDP proceeding is nothing but continuation of suit, in this proceedings also their share can be determined and one more preliminary decree can be passed. Therefore, they have filed the present application to come on record as respondent No.2 and 3. They have made out prima-facie case, balance of convenience is in their favour, if IA is allowed, no loss or injury is caused to other side,

if IA is not allowed, they will be put to heavy irreparable loss which cannot be compensated by any means. Hence, they pray for allow the application.

5. Per contra, the petitioner has filed the detailed objection to the present application and contended that, application filed by the applicants/proposed respondent No.2 and 3 is not maintainable either in law or facts. The present final decree proceedings is filed on the strength of preliminary decree passed in OS No.256/2015 dated: 04.09.2001 on the file of this court, the respondent is the plaintiff in the said suit. The petitioner/plaintiff has filed the said suit against the respondent for partition and separate possession of his $\frac{1}{2}$ share in the suit lands bearing Bl.No.342/1 measuring 08 acres 12 guntas, land bearing Sy.No.306/1 measuring 7 acres situated at Tamba village, Indi Taluka, on the ground that, Siddavva @ Siddamma Horapeti and Shanmukhappa Horapeti are the parents of petitioner/plaintiff. The

respondent/defendant is the son of said Shanmukhappa Horapeti, born through 2nd wife Laxmibai Horapeti. The mother of the petitioner/plaintiff is legally wedded wife of said Shanmukhappa Horapeti. During the wedlock the petitioner/plaintiff and deceased Sanjeev and daughter Bharati were born. The petitioner further contended that, the suit lands along with other family lands are ancestral properties to the family of the petitioner/plaintiff and previously stands in the name of his grand-father Irasiddappa Horapeti. As per partition effected by said Irasiddappa Horapeti in the year 2003, the suit lands were jointly fallen to petitioner and respondent as per ME No.3266.

6. The petitioner/plaintiff has filed the said suit in OS No.256/2015 against the respondent for his ½ share in the said suit lands as the respondent is denying the petitioner's share.

7. The petitioner further contended that, the respondent/defendant appeared in the said case and filed written statement and contended that, among other suit lands along with other lands are ancestral properties to the family and without including all the family lands and members, the said suit is not maintainable. Further, the Hon'ble court answered the said plea of respondent and given finding that all family properties and persons are not necessary parties to the suit and present suit filed by the petitioner is not maintainable. The said findings remains unchallenged.

8. The petitioner further contended that, after due trial, the court has decreed the suit on 04.09.2021, the judgment and decree is upheld by the Hon'ble appellate court and attained its finality. The Hon'ble High Court of Karnataka, Kalburgi Bench, in its judgment in RSA No.200027/23 dated: 14.06.2023 has given findings at para No.16 that the respondent/defendant had sought to implead the other

members of the family and said application was dismissed. Said order has not been challenged and ordered that all the members were not made parties which rendered the suit untenable would fail and by considering the findings of this fact, the Hon'ble first appellate court and Hon'ble High Court of Karnataka, Kalburgi Bench in RSA, the proposed applicant/respondent have filed the present untenable application to implead them in this case. Therefore, the proposed applicant/respondent No.2 and 3 are not entitled to come on record as necessary parties to claim their share in the suit schedule properties.

9. Already partition effected in the year 2003, by virtue of said partition, suit lands were jointly received by petitioner and respondent. Hence, petitioner and Respondent are entitled for their $\frac{1}{2}$ share each in the suit lands and there is no necessity to include all the family lands and other family members of joint family and the applicants/proposed respondent No.2

and 3 have deliberately without any merit filed the present untenable application only with an intention to delay the present proceedings. Therefore, it is prayed that, the application is not maintainable and prays for reject the application.

10. Heard arguments, perused the available materials on record.

11. On perusal of the records it appears that, O.S. No.256/2015 entire file kept this file for reference.

12. On the basis of the above, the following points would arise for consideration for this court;

Points

- 1. Whether the proposed respondent No.2 and 3/applicants show that their presence before this court is necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the present final decree proceedings?**
- 2. What order?**

13. My findings on the above points are as under:

Point No.1:-**In the Negative**

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

REASONS

14. POINT NO. 1 : It is the case of the applicant that, the plaintiff/petitioner and respondent/defendant have colluded with each other and filed suit in OS No.256/2015 and obtained the decree for partition and separate possession without impleading them as parties to the suit. They are the daughters of Shanmukhappa S/o. Siddappa Horapeti, their father had 2 wives first wife namely Laxmibai, who is their mother. During the life time of first wife, their father Shanmukhappa had entered into 2nd marriage with Siddawwa @ Siddamma. They are the necessary parties to the suit and they being the daughters of Shanmukhappa, they are entitled for 2/7th share in the suit schedule properties as per amendment made to the Section 6 of Hindu

Succession Act. Hence, their presence is necessary to draw final decree and prays for award their legitimate share by drawing one more preliminary decree.

15. On the other hand, the petitioner has contended that, the respondents are neither the necessary parties nor proper parties to the present FDP proceedings, because the court has already declared that suit is not barred by non-joinder of necessary parties and mother of the proposed respondent No.2 and 3 has filed the application in OS No.256/2015 to implead her son as necessary party to the suit. Said application was dismissed by this court. Hence, prays for dismiss the application.

16. On perusal of the records it appears that, the plaintiff by name Sri. Anil S/o. Shanmukhappa Horapeti has filed the suit in OS No.256/2015, said suit was decreed on 04.09.2021, hence he has initiated the final decree proceedings in order to draw final decree in terms of preliminary decree passed in OS

No.256/2015. On perusal of the plaint it appears that, plaintiff was minor as on date of suit. Hence his natural mother by name Siddamma @ Siddawwa W/o. Shanmukhappa Horapeti stood as minor guardian. On perusal of the plaint, at para No.4 of the plaint he pleaded that, defendant/respondent is the son of Shanmukhappa Horapeti, born through his 2nd wife by name Laxmibai Horapeti. The mother of the plaintiff is only a legally wedded wife of said Shanmukhappa Horapeti and their marriage was solemnized about 30 years back as per the customs prevailed in their community.

17. In said case, the defendant, who is the brother of applicants put his appearance and filed his detailed written statement and admitted the said fact at para No.6 of the written statement that Smt. Laxmibai is the 2nd wife of deceased Shanmukhappa Horapeti.

18. On perusal of the affidavit annexed to this application, the applicant No.1 has stated that, Smt.

Laxmi, who is her mother is legally wedded wife of deceased Shanmukhappa S/o. Siddappa Horapeti. On perusal of the entire case file in OS No.256/2015, it appears that, one Irasiddappa S/o. Shanmukhappa Horapeti represented through his natural guardian Smt. Laxmibai W/o. Shanmukhappa Horapeti has filed I.A.No.I and stated that, he is also necessary party to the suit. Hence, prays for implead him as defendant No.2. Admittedly said Irasiddappa S/o. Shanmukhappa, who filed the application is the brother of applicants herein. Said application was dismissed by this court on 31.03.2017. Admittedly said order has not been challenged by the proposed defendant No.2. On perusal of the issues framed by this court, the court has framed preliminary issues No.4 with respect to non-joinder of necessary parties, said issues answered in Negative as per order dated: 02.01.2018

19. It is the contention of the applicants that, they are the daughters of deceased Shanmukhappa

Horapeti through his first wife Smt. Laxmibai. But on perusal of the plaint and written statement, it appears that Defendant is the son of Shanmukhappa S/o Siddappa Horapeti through his second wife Smt. Laxmibai. Hence, in this application Court is unable to decide the legitimacy of applicants.

20. The Learned counsel for the applicants has argued that, at any stage of the proceedings, the court can implead the parties to determine the shares and court can pass numerous preliminary decrees. Hence, he prays for allow the application. In support of his argument, he has relied on the decision reported in **2013 (1) KCCR 672 (between Laxmi Narasappa since deceased by his L.Rs Vs B.Rudrayya and others)**, wherein Division bench of our Hon'ble High Court of Karnataka held that no bar to implead the parties in final decree proceedings in appropriate circumstances.

21. In case on hand, on perusal of the documents, it appears that, the defendant No.1 is the brother of applicants. Further, on perusal of the documents it appears that, his brother had acquired the $\frac{1}{2}$ share in the suit schedule properties. The plaintiff and defendant already cultivating the land separately since in the year 2003, the said fact is not disputed by the defendant. Further, the Learned counsel for the applicants has furnished certified copy of the order sheet in OS No.53/2023 which filed before the Hon'ble Sr. C.J. and JMFC Indi, by the applicants against their father, mother and brothers and plaintiff. Hence, they may claim their legitimate share against their father and mother. On perusal of the prayer of the said suit, both suit properties are identical, but they have not sought for cancellation of preliminary decree. Under such circumstances, proposed respondent No.2 and 3 may claim their share in the suit OS No.53/2023.

22. The Learned Counsel for the applicants further argued that, the court may vary the shares in final decree proceedings. Hence, presence of the petitioners are necessary to draw one more preliminary decree. Further, he has relied on decision reported in **2011 AIR SC 2007** (in between **Prema V/s. Nanjegouda and others**) and decision reported in **2014 (1) KCCR 2214** (in between **Chanaveerappagouda Vs. Renukappagouda and others**), wherein the Hon'ble Apex court and the Hon'ble High Court of Karnataka identically held that preliminary decree can be varied and shares can be determined in final decree proceedings. On perusal of the decisions relied by the Learned counsel for the applications is to draw one more preliminary decree in FDP. Admittedly, in final decree proceedings, preliminary decree can be passed when circumstance forced or ground made out to draw preliminary decree. Question before me is that, whether the proposed respondent No.2 and 3 are necessary

parties to the suit or not. As already stated above, the court has already answered the said issues that, the suit is not bad for non-joinder of necessary parties. On perusal of the entire documents, it appears that, grandfather of the plaintiff has divided the property between plaintiff and defendant. Hence, they have filed the present suit with respect to these properties only. Hence, I am of the opinion that, preliminary decree passed by this court attained its finality in RSA No.200027/2023. The proposed respondent No.2 and 3 can claim their legitimate right in OS No.53/2023 which they have already filed before the Hon'ble Sr. Civil Judge and JMFC, Indi. As already discussed *supra* legitimacy of the applicants and share of the applicants can not be decided without full pledged trial. Hence, without much discussion, I hold Point No.1 in the **Negative**.

23. POINT NO.2:- In view of the above discussions and reasoning, court proceeds to pass the following;

ORDER

IA.No.IV filed by the proposed respondent No.2 and 3 U/O.1 Rule 10 of CPC is hereby rejected with costs.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in Open Court, on this the **28th day of May, 2024**)

(H.R. DEVARAJU)

Addl.Civil Judge and J.M.F.C.,
Indi.