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**IN THE COURT OF THE HONOURABLE CIVIL JUDGE & JMFC,
AT YADGIR**

PRESENT: SMT. ASRINA.,B.A, LLB.

CIVIL JUDGE AND JMFC, YADGIR

DATED THIS 2ND DAY OF FEBRUARY, 2023

FDP.NO.3/2017

BETWEEN

PETITIONERS	<p>1. Shri. Channabasappa S/o Shivalingayya, (Since dead, represented by his LR's)</p> <p>a) Smt. Veeramma W/o Late Channabassappa, Aged: 54 Years,</p> <p>b) Smt. Shivaleela D/o Late Channabassappa, Aged: 35 Years,</p> <p>c) Shri. Srinivas S/o Late Channabassappa, Aged: 32 Years,</p> <p>d) Shri. Ambresh S/o Late Channabassappa, Aged: 31 Years,</p> <p>All are R/at: Gopalwadi area, Yadgiri. Tq: & Dist: Yadgiri.</p> <p>(BY Sri. S.M., Advocate)</p>
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RESPONDENTS	<ol style="list-style-type: none">1. Shri. Chandrashekhar S/o Shivalingayya, Aged: 55 Years,2. Shri. Shivakumar S/o Late Sangappa, Aged: 34 Years,3. Shri. Arun S/o Late Sangappa, Aged: 31 Years,4. Shri. Varsha D/o Late Sangappa, Aged: 18 Years,5. Shri. Nadish S/o Late Sangappa, Aged: 16 Years, (Minor) Represented his natural father namely respondent No.2. <p>Respondents No.1 to 5 are R/at: Gogalwai area, Yadgir.</p> <ol style="list-style-type: none">6. Smt. Lalitabai D/o Shivalingappa W/o Basavarajappa Ujja, Aged: 64 Years, R/o: Gopalwadi, Yadgir, <p>Now R/at: Shaik Roja, Kalaburagi.</p>
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	<p>7. Smt. Kasthuribai D/o Shivalingappa, W/o: Rudrappa, Aged: 63 Years, R/o: Gopalwadi, Yadgir. Now R/at: Shaik Roja, Kalaburagi.</p> <p>(Respondents No.1 to 5 by: Shri. A.S.P, Advocate)</p> <p>(Respondents No.6 & 7 by: Shri. M.B.P.H, Advocate)</p>
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**ORDERS ON IA. DATED: 24.11.2020 FILED BY THE
RESPONDENTS NO.6 AND 7 UNDER ORDER 6 RULE 16 R/W
SECTION 151 OF CPC.**

1. This petition is filed by the original petitioner under section 54 of CPC praying to pass final decree in terms of preliminary decree dated: 26.08.2015 passed in OS.No.356/2013. The respondents No.6 and 7 being the real sisters of original plaintiff and the respondent No.1, they were impleaded to this final decree proceedings during the pendency of this petition. In the interregnum, the original petitioner has died and his legal heirs are brought on record.

2. When the above case was at the stage of filing objection to the main petition, the respondents No.6 and 7 have filed the instant application praying to include the house bearing TMC No.8-72 and

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8-73 measuring 1951.20 sq.ft. along with open court yard as described in the application which is situated at Mehaboob Subhani area, Wadi, Tq: Chittapur, Dist: Kalaburagi.

3. In the affidavit annexed to the application it is stated that the aforesaid house bearing TMC No.8-72 and 8-73 is a joint family property of the petitioners and the respondents and all of them have equal share in the house properties. Since the said house properties are not included as a subject matter of the original suit, the same needs to be included in the present final decree proceedings. Non inclusion of the aforesaid properties will amount to denial of legitimate share of the respondents No.6 and 7 in the aforesaid house properties. Therefore, for the proper and effective adjudication of the dispute between the parties, an order requires to be passed directing the petitioner to include the aforesaid house properties in the petition. It is stated that if the application is allowed no hardship will be caused to the petitioner. On the other hand, if the application is not allowed the respondents No.6 and 7 will be put to loss and hardship. Hence, with these grounds the respondents No.6 and 7 have prayed to allow the application.

4. The petitioners have objected the application by contending that the claim made in the instant application as well as the averments made in the accompanying affidavit are false and

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incorrect. It is stated that it is well settled law that the properties which are not the subject matter of the original suit, the same cannot be included in the final decree proceeding. It is stated that the dispute between the parties is already settled in the original proceedings. It is further stated that the house properties which the respondents No.6 and 7 are intending to include are not the ancestral properties but the same are self acquired properties of the petitioners. Even the respondents No.6 and 7 have not placed any materials before the court to show that the proposed house properties are the ancestral properties. Therefore, it is stated by the petitioners that the aforesaid house properties are not liable for partition. With these objections the petitioners have sought for dismissal of the application.

5. Heard both sides. Perused the records.

6. Following point arises for my consideration.

Point No.1: Whether the respondents No.6 & 7 have made out valid grounds to allow the application?

Point No.2: What order?

7. My answers to above points are as under:

Point No.1: In the Negative

Point No.2: As per my findings on
Point No.1 for the following:

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**REASONS**

8. POINT NO.1: the instant petition is filed by the original petitioner so as to draw the final decree in terms of the preliminary decree passed in os.no.356/2013 and thereby to separate his 1/3rd share in the suit properties with metes and bounds.

9. By filing the instant application, the respondents No.6 and 7 have sought for inclusion of the house bearing TMC No.8-72 and 8-73 measuring 1951.20 sq.ft. along with open court yard as described in the application which is situated at Mehaboob Subhani area, Wadi, Tq: Chittapur, Dist: Kalaburagi to this petition and thereby to pass the final decree by allotting the shares of the petitioners and the respondents even in the aforesaid house properties.

10. According to the respondents No.6 and 7 the aforesaid house bearing TMC No.8-72 and 8-73 are the joint family properties of petitioners, respondents No.1 to 5 and of themselves. Since the aforesaid house properties are their joint family properties, the respondents No.6 and 7 have filed the instant application to include the aforesaid house properties to this petition and thereby to pass the final decree by allotting the share of the petitioners and the respondents even in the aforesaid house properties also.

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11. On the other hand, the petitioners have strongly opposed the claim of the respondents No.6 and 7 and thereby the petitioners have contended that the aforesaid house properties are not a joint family properties of themselves and the respondents and rather the petitioners have specifically stated that the aforesaid house properties are self acquired properties of the petitioners. Since the aforesaid houses are the self acquired properties of the petitioners, the petitioners have expressed their strong objection to include the aforesaid house properties to this petition.

12. The respondents No.6 & 7 have produced the certified copy of the sale deed dated: 13.09.1976 registered as a document No.684/1976-77. It discloses that the house bearing panchayth No.6-20/2 situated at Wadi, Tq: Chittapur was purchased by one Smt. Shantamma W/o Ishwarappa. By relying on the said sale deed, the learned counsel for the respondents No.6 and 7 has argued that the purchaser namely Smt. Shantamma is none other than the wife of their own brother namely Ishwarappa and the said Shantamma has purchased the aforesaid house properties under the aforesaid sale deed. But the said sale deed discloses that Smt. Shantamma W/o Ishwarappa had purchased the house bearing panchayth No.6-20/2. So also it discloses that the aforesaid house bearing TMC No.8-72 and 8-73 are not the subject matter of the said sale deed.

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13. Learned counsel for the respondents No.6 and 7 has argued that 6-20/2 is old number of the aforesaid house bearing TMC No.8-72 and 8-73 and in support of his argument learned counsel has submitted the certificate dated 21.09.2021 issued by chief officer of TMC, Wadi. But in the said certificate the chief officer has not given the confirmation that house No.6-20/2 is a old number of the aforesaid house bearing TMC No.8-72 and 8-73 nor has he given the confirmation that the house No.6-20/2 and house bearing TMC No.8-72 and 8-73 are one and the same.

14. Be that as it may. The respondents No.6 and 7 have also produced the copy of assessment register in respect of the aforesaid house bearing TMC No.8-72 and 8-73 for the year 1987-88. It discloses that the aforesaid house bearing TMC No.8-72 and 8-73 were standing in the name of Smt. Shantabai W/o Ishwarappa. The respondents No.6 and 7 have also produced the certified copy of the assessment register pertaining to the aforesaid house bearing TMC No.8-72 and 8-73 for the year 2000-03 and 2003-12. It discloses that subsequently the aforesaid house bearing TMC No.8-72 and 8-73 were standing in the name of the original petitioner namely Mr. Channabassappa S/o Shivalingappa.

15. The respondent No.6 and 7 have produced the certified copy of the gift deed dated: 01.08.2012 which is registered on 03.08.2012

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registered as a document No.2992/2012-13. The contents of said gift deed discloses that the original petitioner namely Mr. Channabassappa S/o Shivalingappa has gifted the aforesaid house bearing TMC No.8-72 and 8-73 in favour of his own son namely the petitioner (d) Mr. Ambresh. The certified copy of assessment register for the year 2003-12 discloses that subsequent to the aforesaid gift deed, the name of the original petitioner Mr. Channabassappa was removed from the municipal records of house bearing TMC No.8-72 and 8-73 and the name of petitioner (d) Mr. Ambresh was entered.

16. The respondent No.6 and 7 have produced the certified copy of the gift deed dated: 26.05.2018 registered as a document No.1159/2018-19. The contents of said gift deed discloses that the petitioner (d) namely Mr. Ambresh has gifted the aforesaid house bearing TMC No.8-72 and 8-73 in favour of his own mother namely the petitioner (a) Smt. Veeramma W/o Channabassappa. The certified copy of assessment register for the year 2003-12 at serial No.432 discloses that subsequent to the aforesaid gift deed, the name of the petitioner No.(a) was entered in the municipal records of the aforesaid house bearing TMC No.8-72 and 8-73.

17. As stated above, in the instant application, the respondent No.6 and 7 have stated that the aforesaid house bearing TMC

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No.8-72 and 8-73 are their joint family property. But the materials available on record is not sufficient to hold that the aforesaid houses are the joint family properties of the petitioners and the respondents. On the contrary, the materials placed on record discloses that the aforesaid house bearing TMC No.8-72 and 8-73 was gifted to the petitioner No.(d) by executing the gift deed dated: 01.08.2012 registered as a document No.2992/2012-13. The materials placed on record also discloses that subsequently the aforesaid house bearing TMC No.8-72 and 8-73 was gifted to the petitioner No.(a) by executing the gift deed dated: 26.05.2018 registered as a document No.1159/2018-19. Therefore, by virtue of aforesaid gift deeds an interest was created in favour of the petitioner No.(a) and (d) in respect of the aforesaid house bearing TMC No.8-72 and 8-73. As stated above, the materials placed on record is not sufficient to hold that the aforesaid house bearing TMC No.8-72 and 8-73 are the joint family properties of petitioners and the respondents. To ascertain whether the aforesaid house bearing TMC No.8-72 and 8-73 are joint family properties of the parties or not, the same requires a full dressed trial. Further, as held above, by virtue of aforesaid gift deeds an interest was created in favour of the petitioner No.(a) and (d) in respect of the aforesaid house bearing TMC No.8-72 and 8-73. Hence, the aforesaid gift deeds executed in favour of the petitioner No.(a) and (d) in respect of the aforesaid house bearing TMC No.

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8-72 and 8-73 will be operative unless the same is canceled or set aside by the court of competent jurisdiction. This court being the executing court and the present petition is one being for final decree proceedings, it cannot go into the validity of the aforesaid gift deeds executed in favour of the petitioner No.(a) and (d) in respect of the aforesaid house bearing TMC No.8-72 and 8-73 and nor this court can hold a full dressed trial to ascertain whether the aforesaid house bearing TMC No.8-72 and 8-73 are joint family properties of the parties or not. Therefore, it is not within the scope of final decree proceedings to hold a trial to ascertain whether the aforesaid house bearing TMC No.8-72 and 8-73 are joint family properties of the parties or not and to go into the validity of the aforesaid gift deeds executed in favour of the petitioner No.(a) and (d). The materials available on record is not sufficient to hold that the aforesaid houses are the joint family properties of the petitioners and the respondents. Accordingly, for what has been discussed above, I hold that the aforesaid house bearing TMC No.8-72 and 8-73 which are sought to be included by the respondents No.6 and 7, the same cannot be included in the present petition. Accordingly, the application fails. **Point No.1 is answered in the Negative.**

18. Point No.2: In view of my foregoing discussions and reasonings on Point No.1, I proceed to pass the following:

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**ORDER**

IA. dated: 24.11.2020 filed by the respondents No.6 and 7 under order 6 Rule 16 R/w Section 151 of CPC is hereby rejected.

Call on: 31.03.2023.

CJ & JMFC, YADGIRI