

**COMMON ORDER BELOW EXHS.1 AND 39**  
**IN FINAL DECREE NO.7/2017**  
(CNR NO.MHAH08-001212-2017)

01. Application Exh.39 is filed by the present applicant who is original defendant No.2 in R.C.S No.132/2012. She has prayed to grant her 1/4<sup>th</sup> share in suit property and hand over its separate possession. She has stated that, opponent No.7 Prakash Raghunath Mutake is her real brother. Applicant's father and uncle were having 1/2 share each in the suit property. Opponent Nos.1 to 6 and 8 are legal heirs of her uncle Radhakisan. According to her, 1/8<sup>th</sup> share is granted to her in R.C.S. No.132/2012, while 3/8<sup>th</sup> share was granted to her brother Prakash. In fact, she along-with defendant No.7 are having equal 1/4<sup>th</sup> share each in suit property. It is submitted that, as per the amended Hindu Succession Act daughter is also entitled for equal share as like son. In final decree proceedings also it can be decided. The final decree proceedings is nothing but continuation of suit. Though in Regular Civil Suit 1/8<sup>th</sup> share was granted to applicant, it can be corrected in final decree proceedings. On these grounds, she has prayed to decide her 1/4<sup>th</sup> share like her brother Prakash and hand over separate possession to her.

02. The application is opposed by opponents vide reply Exh.41. It is submitted that, the application is not tenable. In Spl. C. S. No.77/1999 share was not allotted to present applicant. Said decision has become final. Considering it, share cannot be assumed in final decree proceedings and it cannot be decided. The application is not supported by legal provisions. Hence, it is prayed to reject the application.

03. Heard the learned advocates for the parties. Present final decree proceedings is filed to pass final decree on the basis of decree passed in R.C.S. No.132/2012. The applicant has produced certified copy

of judgment and decree vide list Exh.3. It is seen that, in R.C.S. No.132/2012 present applicant was defendant No.2. The court has passed decree that, applicant was entitled for 1/8<sup>th</sup> share in suit property along-with other sharers. It is seen that, original members Raghunath and Radhakisan were having ½ share each in suit property. They were predecessor in title of the parties. Legal heirs of Raghunath and Radhakisan were held entitled for separate share in their ½ share each. Now applicant submits that, she is entitled for equal 1/4<sup>th</sup> share along-with her brother and prayed to decide it, hand over separate possession of her share. The learned advocate for applicant submitted that, final decree proceedings is continuation of the suit and due to amendment in the Hindu Succession Act the applicant is entitled for equal share like her brother in the ancestral property. It is submitted that, in final decree proceedings share of applicant can be altered. In support of his submission he has relied on the decision in the cases of **Vineeta Sharma V/s. Rakesh Sharma and Others, AIR 2020 SC 3717** and **Smt. Susheelamma since dead by Lrs. V/s. K. Seetharamaiah S/o. Late Krishna Bhatta, Regular Second Appeal No.2586 of 2010**. On the other hand, the learned advocate for opponents submitted that, earlier suit filed by this applicant came to be dismissed and she was not held entitled for any share. Further Regular Civil Appeal is pending on the judgment and decree passed in R.C.S. No.132/2012. It is submitted that, in this proceedings applicant share cannot be altered.

04. It is seen that, applicant is claiming her share in suit property being coparcener. The Hon'ble Supreme Court has held in the case of Vineeta Sharma (cited above) that, daughter is also entitled for equal share in ancestral property like a son. Further it is held that, the provisions of the substituted Section 6 of the Hindu Succession Act are required to be

given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

05. It would be proper to refer here the recent judgment of the Hon'ble Supreme Court in the case of **Prasanta Kumar Sahoo and Others V/s. Charulata Sahu and Others, (2023) 9 SCC 641**, wherein it is held that, devolution of interest in coparcenary property – rights of daughter – law declared in Vineeta Sharma (2020) 9 SCC 1, applicability of to a sub judice matter in which preliminary decree has been passed and final decree yet to be passed – amendment in law governing parties in a partition suit before conclusion of final decree proceedings – effect – held, after decision in Vineeta Sharma, allotment of due share in favour of daughter must be in accordance with law i.e. in equal share with any son – when law governing parties has been amended before conclusion of final decree proceedings, held the same must be considered and appropriately applied by court.

06. In these circumstances, there is no doubt that, applicant's share can be altered in present proceedings. Considering the judgment and decree passed in R.C.S. No.132/2012 the applicant being daughter would be entitled for equal share as like her brother Prakash i.e. opponent No.7 to the extent of 1/4<sup>th</sup> share each. Already court commissioner is appointed in this proceedings to suggest partition of the suit property. Hence, applicant would be entitled for possession of her 1/4<sup>th</sup> share in suit property during the partition of suit property. Therefore, application deserves to be allowed. Hence, following order is passed.

**ORDER**

01. The application is allowed.

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02. The applicant and opponent No.7 Prakash be allowed  $1/4^{\text{th}}$  share each in suit property during partition and separate possession of their share be handed over to them.

Place :- Sangamner.

Date :- 02.12.2023.

(M. M. Shaikh)  
Civil Judge Senior Division,  
Sangamner.

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