



**IN THE COURT OF II ADDL. SENIOR CIVIL
JUDGE & J.M.F.C, RANEBENNUR**

**PRESENT : Sri. MANJUNATHA M.S, B.A., LL.B.
II Addl.Senior Civil Judge & JMFC,
Ranebennur.**

Dated this 27th day of July, 2026.

FDP NO. 8 / 2013

Petitioners : 1. Shivaji
S/o: Venkatesh Kulkarni, Age: 75 yrs, Occ:
Teacher, R/o: Ranebennur, Dist: Haveri and
19 others.

(By Sri. P.R.K, Adv.)

// Vs. //

Respondents : 1. Vijaykumar
S/o: Somarao Kulakarni, Age: 49 yrs, Occ:
Business, R/o: Siddeshwara Nagar,
Ranebennur, Dist: Haveri and 3 others.

**(R.1 to 3 by Sri. P.R.H, Adv.
R.4 by Sri. U.D.D, Adv).**

ORDER ON COMMISSIONER REPORT

As per order passed on I.A No.1, on 06-08-2016, the Taluka Surveyor has submitted a report stating that there is no proper description of the suit property and there is a variation between KDT, RTC and court documents. The property described in the court decree does not exist.

2. An Enquiry was conducted on commissioner report by examining the court commissioner/Taluka Surveyor before the court as CW1. Thereafter as per order dated 29-10-2021 the court commissioner was redirected to make a proposal for division of property as per preliminary decree. On 18-02-2022 the court commissioner has submitted a report stating that extant of property in the survey documents do not tally with the extent shown in the court decree and there is deference of 8 guntas of land and hence he cannot conduct commissioner work.

3. The learned counsel for the petitioners and respondents have filed have objection to the said commissioner report. Thereafter on 17-11-2023 this court by observing that there is dispute regarding existence, the extent and measurement of the suit property. Therefore, if once again the surveyor is directed to make proposal regarding division of property there are chances of filing similar report. Therefore, in order to ascertain whether actual and proper measurement and description of the suit property was furnished at the time of institution of the suit or not, the petitioners were directed to produce all revenue records since 1948, Aakar Band, Tippan and other survey records in respect of the suit schedule property. Thereafter, the petitioners have produced very same documents which are already produced by them in the trial.

4. The learned counsel for the petitioners filed objection to the second commissioner report stating that the commissioner

appointed by this Hon'ble court in respect of the suit property measuring 01 acre 16 gunta out of Sy.No.419/2 which was fallen to the share of four brothers by name Venkatesh, Krishnaji, Chikko and Swamy Rao and standing in their names by virtue of partition. In consequence of difference arose in between the said four brothers and their heirs the suit came to be filed against the defendants for partition and separate possession excluding the land measuring 02 gunta 02 guntas sold by them remaining 01 acre 16 guntas. The defendants in collusion with the survey and revenue authorities created certain mutation entries by changing survey numbers and measurements without the consent of the parties, the old Sy.No.419/2 measuring 01 acre-16 guntas and Extent of the property changed. The previous commissioner filed his report stating the property not in existence. The petitioners have filed objections to the commissioner report, evidence recorded on the report. After having heard both parties, passed an order to make partition as per the decree.

5. The learned counsel for the petitioners further contended that, the present court commissioner as well as previous court commissioner appointed for division of the property in between the shares though collected the entire documents in respect of the suit property filed report stating Sy.No.419/2 measuring 03 acre 17 guntas excluding 02 acre 02 guntas, remaining 01 acre 16 guntas. But as per survey records, it is 03 acres 17 guntas excluding phot kharab it is remaining 03 acres 10 guntas etc.,

directed to make division excluding 02 acres 02 guntas would be 01 acre 02 guntas. On perusal of the commissioner report it clearly discloses survey authorities confused or trying to confuse others. In spite of direction of this Hon'ble court, the survey authorities are giving false information, false report as against the true facts of the case against their own record which were existing at the time of selling 02 acres 02 guntas by four brothers instead keeping the remaining land included the land of Krishanji and Swamy Rao each 28 guntas making those survey number owners as to the extent mentioned corrupting in the RTC as per the fraud survey records by submitting the report with a malafied intention. The commissioner report relies on fraudulent RTC and survey records manipulated by the defendants in collusion with revenue authorities to alter land measurements and survey numbers. Because the report misstates the correct property extents and contradicts true records and evidence, hence liable to be set aside and prays to reject the report entirely.

6. Per contra the learned counsel for the respondents filed objections stating that, the court commissioner has reported to this Hon'ble Court on 18-02-2022 in writing stating that, as there is difference in the measurement when compared in the revenue records with that of the records of the Hon'ble court, he could not execute his commission work and accordingly he has submitted the said report of non-execution of commission work. As per M.E.No.3131 of the year 1948, the original land bearing

Re.Sy.No.419 was divided into two parts as Re.Sy.No.419/1 measuring 05 acres, 12 guntas and as Re.Sy.No.419/2 measuring 03 acres in view of the partition that had taken in apsath in between the four branches of the family. Because, in the said partition the land bearing Re.Sy.No.419/1 measuring 05 acres 17 guntas fell to the joint share of two branches namely 1) Krishnaji and 2) Somarao sons of Ramachandra Kulkarni and it is specifically shown in the said M.E.No.3131, which is marked as Ex.P.6 that both the said sharers have got equal shares in the said 05 acres 17 guntas. Moreover, the said M.E.No.3131 clearly reveals that, what are the properties fallen to the shares of four branches of Ramachandra Kulkarni Family, as he had four sons by name 1) Venkatesh, 2) Krishnaji, 3) Chikku, 4) Somarao @ Swamirao Kulkarni. In the year 1955, as per M.E.No.3780, which is marked as Ex.P.7, the joint holders and possessors of the land bearing Re.Sy.No.419/1 measuring 05 acres, 17 guntas by name 1) Krishnaji and 2) Somarao sons of Ramachandra Kulkarni, have entered into partition in apsath and in the said partition the said land is divided into two parts as R.S.No.419/1A measuring 02 acres, 28 guntas and as Re.Sy.No.419/1B measuring 02 acres, 29 guntas. Thus, in the year 1955 Somarao S/o Ramachandra Kulkarni became the holder and possessor of the land bearing Re.Sy.No.419/1B measuring 02 acres, 29 guntas. Accordingly, Krishnaji Ramachandra Kulkarni became the holder and possessor of the land bearing Re.Sy.No.419/1A measuring 02 acres, 28 guntas.

7. He further stated that in the year 1988, Hissa Form No.12 was received from the office of ADLR and numbered as RNR/PHS-1045. In fact, KJP Vahi 194/1986-87 of Ranebennur, Dated 25-03-1987 was received in respect of Phot Hissa that was made to the said Re.Sy.No.419 and as per the said PHS No.12, the land bearing R.S.No.419 totally measuring 08 acres, 17 guntas, PK-18 guntas was divided into three parts as Re.Sy.No.419/1 measuring 03 acres, 14 guntas, PK-02 guntas and as Re.Sy.No.419/2 measuring 03 acres, 10 guntas, PK-07 guntas and as Re.Sy.No.419/3 measuring 01 acre, 33 guntas PK-09 guntas. The land bearing Re.Sy.No.419/1 is shown in the name of Krishnaji Kulkarni and Re.Sy.No.419/2 is shown in the name of Somarao Kulkarni and Re.Sy.No.419/3 is shown in the name of Krishnaji Kulkarn and others. The copy of the said M.E.No.16337, which is marked at Ex.P.8 is produced with this objections statement.

8. In fact, all the heads of four branches have given their statements before the Taluka Surveyor Ranebennur on 20-11-1986 to enter their respective names to the respective portions of the land in which they are making actual vahivat and enjoyment. The copy of the said statement is Ex.D-2 and the same is produced with this objections statement. As per the said statement dtd: 20-11-1986, the Hissa Form No.4 was prepared by the Competent Revenue Authority and the have clearly shown the names of cultivators of the lands in Col.No.11

and all the said cultivators have also signed to the same and accordingly the measurement of the land bearing Re.Sy.No.419/1 is shown as 03 acres, 16 guntas and the measurement of Re.Sy.No.419/2 is shown as 03 acres, 17 guntas and the measurement of Re.Sy.No.419/3 is shown as 02 acres, 02 guntas and the copy of the said Hissa Form No.4 is produced with this objections statement and the same is marked as Ex.D.3.

9. It is further contended that it is quite interesting to submit that, Sub-Division Appeal No.2/1999- 2000 was preferred before the Deputy Director of Land Records, Dharwad and the said appeal was dismissed which was filed against the present defendant No.1 and ADLR, Haveri and Taluka Surveyor, Ranebennur. As against the order passed in Sub-Division Appeal No.2/1999-2000 dated 07-08-1999, the revision petition No.10/1999-2000 was filed before the Joint Director of Land Records Belgaum and the said Revision Petition is also dismissed on 31-01-2000 and the copy of the said order of Revision Petition is produced herewith and the same is already marked as Ex.D.5. When this being the real facts and circumstances, plaintiffs in O.S.No.69/2001 have shown the land bearing Re.Sy.No.419/2, measuring 01 acre, 16 guntas, out of 03 acres, 18 guntas as the suit schedule property and they have produced the RTC of the land bearing Re.Sy.No.419/2 measuring 03 acres, 17 guntas of the year 1992-1993 dtd: 21-08-1993, even though the suit was filed in the year 2001. This intentional act of the plaintiffs has misled the entire

proceedings. The entire plaint of the plaintiffs in O.S.No.69/2001 may kindly be looked into. In the cross examination dated 03-04-2007 of PW-1 he has clearly admitted that 28 guntas of land was merged in the land bearing Re.Sy.No.419/1 belonging to his father. Further, he has also deposed that his father has requested to delete the said 28 guntas of land from the land bearing Re.Sy.No.419/1 during his lifetime and thereafter, he also has requested to delete the said 28 guntas of land which is merged in Re.Sy.No.419/1. Thus, it is a clear case that, the land measuring 28 guntas is merged in Re.Sy.No.419/1 belonging to Krishnaji Ramachandra Kulkarni and 28 guntas is merged in Re.Sy.No.419/2 belonging to Somarao Ramachandra Kulkarni. When such being the real position, the plaintiffs have intentionally shown that, 1 acre, 16 guntas is part and parcel of Re.Sy.No.419/2 which is to be shared, instead of bringing out the truth of adding/merging 28 guntas in Re.Sy.No.419/1 and 28 guntas in Re.Sy.No.419/2. Thus, the records in the revenue office are not tallying with the records of the Hon'ble Court. RSA.No.100096/2016 is pending before the Hon'ble High Court of Karnataka, Dharwad Bench as against the Judgment and Decree passed in R.A.No.66/2008 for adjudication. Under all these circumstances, it is most humbly prayed to this Hon'ble court not to pass the final decree till the pending disposal of Re.Sy.No.100096/2016 and further prayed not to issue the commission warrant, in the interest of justice and equity.

10. Heard both side and perused the material on record.

11. On perusal of the record it disclose that the plaintiffs have filed OS No.69/2001 for partition and separate possession contending that suit property measuring 01 acre 16 gunta out of Sy.No. 419/2 which was fallen to the share of four brothers by name Venkatesh, Krishnaji, Chikko and Swamy Rao and standing in their names by virtue of partition. In consequence of difference arose in between the said four brothers and their heirs the suit came to be filed against the defendants for partition and separate possession excluding the land measuring 02 gunta 2 guntas sold by them remaining 01 acre 16 guntas. The said suit came to be decreed as per judgment and decree dtd: 16-04-2008 by holding that plaintiff Nos.1 to 3 and defendant No.4 are entitle to get $\frac{1}{4}^{\text{th}}$ share, plaintiff Nos.4 to 9 are entitle to get $\frac{1}{4}^{\text{th}}$ share, defendant No.1 to 3 are entitle $\frac{1}{4}^{\text{th}}$ and defendant Nos.5 and 6 are entitle to get $\frac{1}{4}^{\text{th}}$ share in the suit schedule property. Thereafter to draw final decree as per preliminary decree, the present Final decree proceedings came to be initiated.

12. The records disclose that even prior to institution of the suit in OS No.69/2001, the petitioners/plaintiffs had approached the Assistant Director of Land Records, the Deputy Director of Land Records and thereafter the Joint Director of Land Records seeking Haddubastu and correction of survey records in respect of the suit schedule property. The said authorities, after considering the material placed before them, rejected the

plaintiffs' claim. Admittedly, the plaintiffs did not challenge those orders before the Hon'ble High Court and the same have attained finality.

13. Instead of first setting aside the orders of the Revenue Authorities through appropriate legal proceedings, the plaintiffs/petitioners instituted a simple suit for partition without seeking any declaration regarding the correctness of the revenue records or the validity of the orders passed by the Revenue Authorities. Such a course is legally impermissible. A decree for partition presupposes the existence and identity of the property sought to be partitioned. Where the very identity, extent and existence of the property had already been disputed and negated by the competent Revenue Authorities, the plaintiffs/petitioners ought to have first established their rights by obtaining appropriate declaratory relief and by getting the revenue records corrected. Without doing so, they obtained a preliminary decree in a simple suit for partition.

14. The preliminary decree passed in O.S.No.69/2001 merely declared the shares of the parties. During these Final Decree Proceedings, Taluka Surveyor was appointed as Court Commissioner for identification and division of the property by metes and bounds as per preliminary decree. The Court Commissioner has twice submitted detailed reports stating that the property described in the decree cannot be identified on the

spot as the extent, survey records and physical existence of the property do not tally with the decree schedule. The Court Commissioner has categorically reported that commission work could not be executed.

15. The petitioners/ plaintiffs have filed objections alleging manipulation of survey records by the revenue authorities in collusion with defendants. The defendants have also filed elaborate objections contending that the suit schedule property itself does not exist in the manner described in the decree and have relied upon Mutation Entries, Hissa proceedings, revenue records and the orders passed by the Deputy Director of Land Records and Joint Director of Land Records.

16. This Court thereafter granted sufficient opportunity to the petitioners/plaintiffs to produce authentic revenue records or any better documents enabling identification of the property. However, the petitioners/plaintiffs have once again produced the very same documents which were already available before the Commissioner. No subsequent survey sketch, phodi records, re-survey records or competent order correcting the survey entries has been produced.

17. Therefore, the controversy is no longer confined to division of the property. The real dispute is whether the property described in the preliminary decree exists at all and whether the survey records maintained by the Revenue Department are

correct or require correction. Such questions fall exclusively within the jurisdiction of the competent Revenue Authorities and, if necessary, the Hon'ble High Court in exercise of its writ jurisdiction. A Court exercising jurisdiction under Order XX Rule 18 R/W Order XXVI Rules 13 and 14 of the Code of Civil Procedure cannot adjudicate upon correctness of survey records, effect corrections in revenue entries, order fresh phodi or create a new identity for a property different from that contained in the decree.

18. The Hon'ble Supreme Court in **Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689**, has held that the object of final decree proceedings is only to work out the preliminary decree and effect actual partition. Therefore the Final Decree Court cannot enlarge the scope of the decree or decide independent disputes relating to title or identity of properties. Similarly, in **Topanmal Chhotamal v. Kundomal Gangaram, AIR 1960 SC 388** the Hon'ble Supreme Court has reiterated that an executing court cannot travel beyond the decree nor can it substitute or alter the subject matter of the decree. The Hon'ble Karnataka High Court in **Smt. Akkamma and another v. Narayana T. Amin and others, ILR 2004 KAR 634**, has held that the Court conducting final decree proceedings is required to divide only the identifiable property covered under the preliminary decree and cannot undertake adjudication of independent disputes regarding survey records or identity of the

property. In the present case, the Court Commissioner has categorically reported that the suit property described in the decree cannot be located and partition by metes and bounds is impossible. Unless the survey records are corrected or the identity of the property is established before the competent forum, no executable final decree can be drawn.

19. Therefore this Court is of the considered opinion that the present Final Decree Proceedings have become incapable of execution. The relief sought by the petitioners/plaintiffs necessarily requires adjudication by the competent Revenue Authorities or other forum having jurisdiction to determine the identity and existence of the property. This Court, while exercising jurisdiction in Final Decree Proceedings, cannot decide those issues. Accordingly, the Final Decree Proceedings deserve to be dismissed as having become inexecutable, leaving liberty to the parties to work out their remedies before the competent forum in accordance with law.

ORDER

The Final Decree Proceedings are hereby dismissed as inexecutable.

It is held that the suit schedule property described in the preliminary decree could not be identified on the basis of the existing survey number and revenue records and partition by metes and bounds is not possible.

It is further held that the dispute regarding existence, identity, survey number, extent and correctness of the revenue records cannot be adjudicated in Final Decree Proceedings under Order XX Rule 18 CPC and falls within the jurisdiction of the competent forum.

The dismissal of these Final Decree Proceedings shall not preclude either party from seeking appropriate relief before the competent Revenue Authority or any other competent forum in accordance with law. If such proceedings ultimately establish the identity of the property, it is open to the parties to take such steps as are permissible under law.

Draw decree accordingly.

(Directly dictated to the Stenographer through computer, after typed by her, corrected and then pronounced in open court on this the 27th day of July, 2026)

(Manjunatha M.S.)
2nd Addl. Civil Judge & JMFC.
Ranebennur.