

**IN THE COURT OF THE SENIOR CIVIL JUDGE,
SAUNDATTI AT ; SAUNDATTI.**

Present : **Sri. C. Veerabhadraiah**

M.A.,LL.B.

Prl. Senior Civil Judge, SAUNDATTI.

Dated this the 15th Day of July 2020

FDP. No.14/2017

PETITIONER :

1. Shri. Gangappa @ Gangadhar S/o Bhimarayyappa Bogar
Age : 54 years, Occ: Service,
R/o: Baligar Oni, Saundatti, Tal : Saundatti.

(By Sri. R.S.A. Advocate)

V/s

RESPONDENTS :

1. Smt. Sharadabai W/o Bhimarayappa Bogar
Age: 83 years, Occ: Household Work,
R/o: Baligar Oni, Saundatti, Tal : Saundatti.
2. Shri. Kalappa S/o Bhimarayyappa Bogar
Age : 57 years, Occ: NIL,
R/o: Baligar Oni, Saundatti, Tal : Saundatti.
3. Shri. Yallappa S/o Bhimarayyappa Bogar
Age : 53 years, Occ: Agriculture,
R/o: Baligar Oni, Saundatti, Tal : Saundatti.
4. Smt. Akkavva W/o Subhas Izare
Age : 48 years, Occ: Household Work,
R/o: Mahila Vastra Bhandar, Utensils Shop

Bazar Road, Rayabag, Tq.: Rayabag,
Dist: Belagavi.

5. Smt. Devakkappa W/o Ashok Yeraseeme
Age; 47 years, Occ: Household Work,
R/o: Durgi Temple. Maralakoppa road,
right side, Padmamba Nilaya Honnalli,
Dist: Davanageri-577601.

(R-1,2 &4,5: By Smt. R.P.T. Advocate)

(R-3 : By Sri. V.V.H. Advocate)

JUDGMENT

The petitioner has filed the present petition as against the respondents by placing reliance on the provision under Order XX Rule 18 read with Section 54 CPC, seeking to draw up the final decree based on the terms enumerated in the judgment and preliminary decree passed by this court in O.S.No.17/2009, dated 24-08-2012, by securing the demarcation report from the competent authority.

The contentions of the petitioner as crystallized in the petition in nutshell are as below;

2. It is contended that, he had filed the suit in O.S.No.17/2009, on the file of this court as against the respondents herein for the relief of partition and separate possession in respect of the suit schedule A and B properties

and after adjudication, the said suit was decreed in part through the judgment and preliminary decree of this court dated 24-8-2012. Through the said decree, himself and respondent No.3 have been ascertained with the share at the quantum of 1/6th each in all the suit properties and other parties to the suit were also ascertained with at the rate of 1/6th each in the suit properties. As against the said judgment and preliminary decree, the respondent No.3 herein had preferred an appeal before the Hon'ble High Court of Karnataka in RFA No.4149/2012 and the said appeal was came to be dismissed on 14-8-2014. Against the said judgment and decree, no any further appeal has been preferred by any of the respondents. In totally, the share ascertained though the aforesaid preliminary decree is nowhere varied or modified in any manner. The share ascertained or defined through the aforesaid preliminary decree is not yet identified to occupy the possession. Thus, it is necessary to demarcate the share and pass the final decree for enforcing his share right. Accordingly, it is prayed to allow the petition and draw up the final decree.

3. After filing the petition, this court has registered the petition as numbered above and issued notice to the respondents. In pursuance of notice, the respondent No.1, 2, 4 and 5 and the respondent No.3 have put their appearance

before the court through their respective counsels. Despite of provided sufficient opportunity no any respondents have chosen to file any statement of objection by opposing the claim of petitioner in any manner. Thereafter, this court has caused enquiry with the petitioner at PW-1 and Ex.P.1 and 2. By that time, the petitioner has made confirm that the quantum of preliminary decree involved herein is nowhere varied or modified in any manner. Subsequently, this court has appointed the court commissioners and has secured the earmark report in respect of the decreetal properties, which is in the form of preliminary decree. The reports submitted by the court commissioners are also remained as undisputed and in this regard, the respondents have not at all filed any objection and whereas the petitioner has given his consent to accept the report and draw up the final decree.

4. Heard argument from both side counsels and perused the materials on record.

5. Points that arise for my consideration are as below:

- (1) Whether the petitioner made out valid ground and feasibility to draw up the final decree as prayed ?
- (2) What order or decree ?

6. My findings to the above points are as below :

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:** The petitioner has claimed to draw up final decree by virtue of the judgment and preliminary decree passed in O.S.No.127/2009, dated 24-8-2012. It is contended by the petitioner is that he had filed the aforesaid suit for the relief of partition and separate possession in concerned to the land in Sy.No.70/1+2 measuring 15 acres 20 guntas of Kenchalarakoppa village and property in TMC No.240, TMC No.382 and TMC No.382/A, CTS No.893/TMC No.377/1B, CTS No.892/TMC No.377/1C, CTS No.1409/TMC No.378/1 situated at Saundatti town, Saundatti and property in TMC No.2215 situated at Yallammagudda of Saundatti. After adjudication the suit was ended in decree in part and in the said decree, he has been defined with share at the quantum of 1/6th in all the suit properties. It is also contention of the petitioner is that as against the judgment and preliminary decree passed in O.S.No.17/2009, the respondent No.3 herein had preferred an appeal in RFA No.4149/2012, before the Hon'ble High Court of Karnataka and the said appeal was came to be dismissed and the judgment and decree passed by this court has been

confirmed. The respondents have not at all raised any adverse whisper as against the stand urged by the petitioner. Though the respondents No.1 to 5 have been before the court, but they have not at all raised any counter voice on the claim of petitioner in any manner. Further the petitioner has tendered his testimony and in the said testimony, he made clear that the preliminary decree involved herein is nowhere varied or modified in any manner. In support of his testimony, the petitioner has produced the judgment and preliminary decree of O.S.No.17/2009, dated 24-8-2012 and the judgment passed in RFA No.4149/2012, dated 14-8-2014 and got marked them at Ex.P.1 and 2. The Ex.P.1 and 2 are very much cogent with the stand urged by the petitioner towards prayer made in the present petition. According to Ex.P.1, the petitioner herein had filed the suit in OS No.17/2009, in respect of properties as extracted above, which described at the suit schedule A and B based on their character and in the said proposition, the petitioner and respondent have been ascertained with equal share at the quantum of $1/6^{\text{th}}$ each. The judgment passed in RFA No.4149/2012 discloses that the appeal preferred by the respondent No.3 herein was dismissed and the judgment and preliminary decree passed by this court has been confirmed. There is no any other proof is placed by the respondents to

show that any further appeal is pending for consideration or any stay order is operated to stall further proceeding of this petition. In further, this court has secured demarcation report by appointing the Junior Engineer, TMC Saundatti and ADLR Saundatti. The reports submitted by the court commissioners are not at all hasted by the respondents in any manner and they have not at all raised any adverse voice on any ground. The petitioner has given his consent to accept the report and draw up the final decree.

8. The ADLR Saundatti has submitted his earmark report and the said report discloses that before conducting the entrusted task, he has issued notice to the parties and on the fixed date, he has conducted the demarcation in respect of the suit schedule A property, by following the terms of preliminary decree. The demarcation report submitted by the ADLR Saundatti is tagged with the notice, the proof of dispatch of notice, statement recorded at spot, from No.4, copy of preliminary decree, RTC, PT sheet and demarcation report. According to the demarcation conducted by the ADLR, the land in Sy.No.70/1+2 of Kenchalarakoppa is comprised with total land to an extent of 15 acres 20 guntas including 3 gunta kharab and therein he devolved the shares of 6 in number by following the preliminary decree. In further, the ADLR

Saundatti has made clear the measurement of each share of the parties that as:

ಕೋರ್ಟ್ ಕಮೀಷನ 1/6 ರಂತೆ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿ ಪಾಲು:

ಸ.ನಂ.	ಹಿ.ನಂ.	ಒಟ್ಟು ಕ್ಷೇತ್ರ ಎ-ಗು-ಆ	ಖರಾಬ ಎ-ಗು-ಆ	ಸಾಗು ಕ್ಷೇತ್ರ ಎ-ಗು-ಆ
70	I ವಾದಿ	2-24-0	0-1-3	2-22-13
	II ಪ್ರತಿವಾದಿ	2-24-0	0-1-3	2-22-13
	III ಪ್ರತಿವಾದಿ	2-24-0	0-1-3	2-22-13
	IV ಪ್ರತಿವಾದಿ	2-24-0	0-1-3	2-22-13
	V ಪ್ರತಿವಾದಿ	2-24-0	0-1-3	2-22-13
	VI ಪ್ರತಿವಾದಿ	2-24-0	0-1-3	2-22-13
	√6	√15-24	√0-7	√15-17

9. On careful considered the aforesaid report, it clearly shows that the said report is forth come by following the terms of unvibrated preliminary decree. Further the court commissioner in this regard has made clear the identity of the share by preparing the sketch which corresponding with PT sheet. Since the report is not at all opposed by any of the parties and the petitioner has given consent to accept the report, then it shows that the report is acceptable in all manner. More probatively, the earmark discharge by the competent authority in respect of the suit schedule A is within the ambit of preliminary decree. Therefore the said report is acceptable in all manners, without any hesitation.

10. In further, this court has appointed the Junior Engineer attached to the TMC Saundatti to conduct the demarcation report in respect of the suit schedule B properties as described in the preliminary decree involved herein. The said court commissioner has conducted demarcation report in respect of all the properties involved in the suit schedule B in reference to the preliminary decree and submitted the detailed report. The said report has also not been questioned by any of the parties and that too, the petitioner has expressly given his consent to accept the report. On cursory study with the judgment and preliminary decree passed in O.S.No.17/2009, it is very clear that the petitioner and respondents herein have been ascertained with the equal share at quantum of 1/6th each in the suit schedule B properties also. By following the terms and condition of the preliminary decree, the Junior Engineer attached to the TMC, Saundatti has sever the shares of parties in each property, which are comprised in the suit schedule B in reference to the preliminary decree. While conducting such identification of share, the court commissioner has recognized the convenience of parties to enjoy their respective share and demarcated the shares. Mean to say that, the right of way or easement of way aspect has been considered and has demarcated the shares in the suit schedule B properties and the

said aspect is clearly displayed from the sketch furnished along with report. Further, the court commissioner in this regard has produced mahazar as the proof of conducting demarcation report in the instance of presented party and witnesses in the spot. The demarcation report submitted by the Junior Engineer attached to the TMC Saundatti is correspondingly legitimate with the terms of preliminary decree passed in O.S.No.17/2009.

11. There is no any infirmity found with the aforesaid demarcation reports to scratch them in any manner. Thereby, this court is of the opinion that the demarcation report are acceptable in all manner and based on those report, the final decree can work out. The materials on records are very clear that the judgment and decree passed in O.S.No.17/2009 is nowhere shaken in any angle an even in the appeal, the said decree has been confirmed. The court commissioners reports were come into existence well within the line of terms enumerated in the judgment and decree involve herein. Therefore this court is at considered opinion that the petitioner has made out the valid ground and feasibility to draw up the final decree in terms of preliminary decree and demarcation or earmark reports. Thus, I answered point No.1 in the 'Affirmative'.

12. **Point No.2:** In the light of aforesaid discussion and finding assigned on point No.1, I proceed to pass the following:

ORDER

The petition filed by the petitioner under Order XX Rule 18 read with section 54 CPC is hereby allowed.

The reports submitted by the court commissioners are hereby accepted.

The petitioner is at liberty to take possession of his share, in accordance with law, as identified by the court commissioners through their respective reports.

Draw final decree accordingly. The reports of court commissioners shall part and parcel of the final decree.

The office is hereby directed to collect necessary stamp duty from the petitioner in respect of his share and draw up final decree.

(Dictated to the stenographer directly on the computer, computerised by her, corrected, revised and then pronounced by me in the open court on this the 15th Day of July 2020).

(C. Veerabhadraiah)

Prl. Senior Civil Judge, Saundatti.

ANNEXURES

Witnesses got examined by the petitioner :

P.W.1: Gangappa @ Gangadhar S/o Bhimarayyappa Bogar

Documents got marked by the petitioner :

Ex.P.1 &2: C.C. of judgment & Decree in O.S.No.17/2009

Witnesses got examined by the respondents :

-Nil-

Documents got marked by the respondents :

-Nil-

(C. Veerabhadraiah)
Prl. Senior Civil Judge, Saundatti.

Order pronounced in the Open Court
(Vide separate order)

ORDER

The petition filed by the petitioner under Order XX Rule 18 read with section 54 CPC is hereby allowed.

The reports submitted by the court commissioners are hereby accepted.

The petitioner is at liberty to take possession of her share, in accordance with law, as identified by the court commissioners through their respective reports.

Draw final decree accordingly. The reports of court commissioners shall part and parcel of the final decree.

The office is hereby directed to collect necessary stamp duty from the petitioner in respect of her share and draw up final decree.

(C. Veerabhadraiah)
Prl. Senior Civil Judge, Saundatti.

(C. Veerabhadraiah)

Prl. Senior Civil Judge, Saundatti.