

KADW050061472022



Presented on : 11-10-2022
Registered on : 12-10-2022
Decided on : 13-01-2025
Duration : 2 years, 3 months, 2 days

**IN THE COURT OF THE II ADDL.SENIOR CIVIL JUDGE & JMFC,
AT DHARWAD.**

**Present: Smt. HEMASHREE D.
B.A.(LAW) LL.B.**

II Addl. Sr. Civil Judge & JMFC., Dharwad.

Dated this the 13th day of December 2025.

FDP No. 57/2022

- Petitioners** : 1. Mandakini W/o Basavaprabhu
Parvati,
Age: 70 years,
Occ: House wife,
2. Shubalaxmi D/o Basavaprabhu
Parvati,
Age: 37 years,
Occ: Private job,

All the petitioners are
R/o. Manjushree,
40, 2nd main,
Mahant Nagara,
Kelageri road,
Dharwad - 580 001.

(By Sri. KLP Adv.)

Vs.

Respondent : Praveen S/o Basavaprabhu Parvati,
Age: 39 years,
Occ: Business,
R/o. Manjushree,
40,2nd main,
Mahant Nagara,
Kelageri road,
Dharwad - 580 001.

(By Sri. NMH Adv.)

ORDERS

This petition is filed by the petitioners seeking to draw the final decree in this case.

2. The petition averments are as follows:

The petitioners along with respondent No.1 and 2 had filed suit in OS No.13/2020 for the relief of partition and separate possession. The suit came to be decreed. As per the terms of the decree the petitioners are entitled to 1/3rd share in the schedule properties. Hence, in view of the judgment and decree the petitioners are entitled to partition and separate possession of their shares in the

schedule properties. Accordingly prayed to draw final decree in this case.

3. After service of notice the respondent remained absent and he is placed exparte.

4. The City Surveyor, Dharwad is appointed as court commissioner to measure and demarcate the schedule property as per the terms of the preliminary decree. Accordingly the City Surveyor has measured and demarcated the schedule property in accordance with the terms of the preliminary decree and submitted his report.

5. During pendency of the petition petitioner No.1 was reported to be dead. However, the Lrs of deceased petitioner No.1 are not brought on record within the stipulated time. Hence, the case in respect of petitioner No.1 stood abated.

6. In spite of grant of sufficient time the petitioners and the respondent have not filed any objections to the commission report.

7. The following points arise for my consideration:

1. Whether the petitioner No.2 is entitled to final decree in terms of preliminary decree in OS No.13/2020?

2. What order?

8. My findings on the above points are as follows:

Point No.1: In the affirmative.

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

REASONS

9. **Point No.1:** As per the preliminary decree the petitioners are entitled to 1/3rd share each in the schedule property. Accordingly the commission report filed by the City Surveyor, Dharwad discloses that after measurement he has proposed to divide the schedule property into 3 shares and demarcated the same by metes and bounds so as to assist the court in allotment of the shares of the respective parties.

10. The petitioners and respondent have not objected to the commission report.

11. As per the sketch annexed to the commission report the schedule property is divided into four parts as block I, II, III and IV. The 1/3rd share each of the petitioner No.1 and 2 are demarcated as block III and IV. The remaining 1/3rd share of the respondent in the said property is demarcated as block II. Block No.I is shown as the joint passage to the petitioners and respondent. As stated above the case in respect of petitioner No.1 stood abated. Hence, as per the commission sketch block IV is allotted to petitioner No.2 and block No.II is allotted to the respondent.

12. The commission report and the annexed sketch show the proposal for partition in respect of property bearing CTS No.27 of Narayanpur village. The certified copy of judgment and decree in OS No.13/2020 is on record which discloses that the suit involves only one schedule property and the aforesaid property of Narayanpur village

is not the subject matter of the suit. Therefore, the commission report to the extent of the property bearing CTS No.27 of Narayanpur village is set aside. So far as the suit property is concerned the commission report is accepted.

13. The respondent has failed to comply the terms of preliminary decree. There are no materials on record regarding pendency of any appeal. Moreover, no stay order if any, is reported. Accordingly petitioners are entitled for final decree in their favour. **Accordingly, point No.1 is answered in the affirmative.**

14. **Point No.2:** In view of the above discussion I pass the following;

ORDER

The final decree petition is allowed as follows-

The petitioner No.2 is entitled to 1/3rd share in the schedule property and as per sketch prepared by the court commissioner block IV in the schedule property is allotted to her and block II in

the said property is allotted to the respondent on payment of necessary court fees.

The commission report and sketch in respect of schedule property shall form part and parcel of the final decree.

Draw final decree accordingly.

(Directly dictated to the Stenographer and typed by her and then corrected and pronounced by me in the open court on this the **13th day of January, 2025**).

(Smt. Hemashree D.)
II Addl Sr. Civil Judge and JMFC,
Dharwad.