

**IN THE COURT OF THE 4TH ADDL-DISTRICT AND
SESSIONS JUDGE, HASSAN DISTRICT
At Channarayapatna**

Present: Sri.M. N.Saunshi B.A., L.L.B.(Spl)
4th Additional District and
Sessions Judge, Hassan District.
(Sit at Channarayapatna)

DATED 20th DAY OF DECEMBER 2019

Regular Appeal No.286/2015
AND
Regular Appeal No.341/2015

APPELLANTS IN R.A.
NO.286/2015

1. Jamrud Pasha S/o. Late Abdul Jabbar, aged about 62 years,
2. Zaheeda Begum, W/o. Mahammed Anwar, aged about 60 years,
3. Siddiq Pasha S/o. Late Abdul Jabber, aged about 50 years.
4. Jeenath Unnisa D/o. Late Abdul Jabber, aged about 65 years.
5. Rahima Banu D/o. Late Abdul Jabber, aged about 54 years.
6. Naseema Banu D/o. Late Abdul Jabber, aged about 53 years.
(All are R/o. Old Post Office Road, Channarayapatna)
7. Fareed Ahamed S/o. Mohammed Mastan, aged about 53 years.

8. Nishat Begum, W/o.
Mohammed Anvar, aged about
60 years,
Since dead by her Lrs
- 8(a) Anwar Pasha, aged about 70
years.
- 8(b) Junaid Pasha S/o. Anwar Pasha,
aged about 45 years.
- 8(c) Arhshiya Begaum D/o. Anwar
Pasha, aged about 43 years.
- 8(d) Amreen Begaum D/o. Anwar
Pasha aged about 41 years.

(All are R/o. 4S, 4/1, Samad
Building, 7th Main, Palace
Guttahalli, Bengaluru-560 003.

9. Nazhat Begum W/o.
Mohammad Ahamad, aged
about 52 years.
10. Nasreen begaum W/o.
Mohammad Afizulla aged about
50 years.
11. Fyaz Ahamed S/o. Mohammed
Mastan, aged about 49 years.
12. Tahseen Begaum, W/o. Late
Maktar Ahamad, aged about 47
years.
(Appellant No.7 to 12 are R/o.
#10, 10th Mary A Street, 2nd
Main, Samadhanagar Post,
K.G. Halli, bangalore-560 045.

(By Sri.Chandrashekar C.
Chanaspur, Advocate)

V/sRESPONDENTS IN R.A.
NO.286/2015

1. **S.G. Abdul Aziz**
Since dead by his Lrs
1. Kirunnisa W/o. Abdul Aziz,
aged about 87 years.
2. Najmunnisa D/o. Late S.G.
Abdul Aziz, aged about 67
years.
3. Jameela Banu D/o. Late S.G.
Abdul Aziz, aged about 65
years.
4. Jazirina Banu W/o. Abdul
Kaheem, aged about 50 years.
5. Shamiunnisa D/o. Late S.G.
Abdul Aziz, aged about 56
years.
6. Abdul Afiz S/o. Late S.G.
Abdul Aziz, aged about 54
years.
7. Abdul Samad S/o. Late S.G.
Abdul Aziz, aged about 52
years.
8. Mahamad Musthak S/o. Late
S.G. Abdul Aziz, aged about 50
years.
9. Abdul Kaleel S/o. Late S.G.
Abdul Aziz, aged about 44
years.

10. Abdul Sala, S/o. Late S.G. Abdul Aziz, aged about 42 years.

(All are R/o. K.R. Circle, Bagur Road, Channarayapatna)

2. S.G. Abdul Rasheed S/o. Late Abdul Gaffar since deceased by his Lrs,

- a. Rehamathai, aged about 70 years W/o. Late S.G. Abdul Rasheed
Since deceased by her LRs 2 (b) to (f)

- b. C.R. Abdul Rub, S/o. Late S.G. Abdul Rasheed, aged about 55 years.

- c. C.R. Abdul Hamid, aged about 50 years S/o. Late S.G. Abdul Rasheed.

- d. C.R. Abdul Adi, aged about 50 years S/o. Late S.G. Abdul Rasheed.

- e. C.R. Abdul Hakeem S/o. Late S.G. Abdul Rasheed, aged about 40 years.

- f. Israth Unnisa D/o. Late: S.G. Abdul Rasheed, aged about 39 years.

(Respondent No.2(b) to (f) are R/o. Kanchugar Street, Channarayapatna, Hassan District)

3. S.G. Abdul Nabi
Since deceased by his Lrs:
- a. Mumtaz Begum W/o. Late S.G. Abdul Nabi, aged about 60 years.
 - b. Sardhr Ahamad Shaheen, S/o. Late S.G. Abdul Nabi, aged about 50 years.
 - c. Jweed Iqbal Ahamad S/o. Late S.G. Abdul Nabi, aged about 48 years.
 - d. Noor Mhamad Galeed S/o. Late S.G. Abdul Nabi, aged about 45 years.
 - e. Safeer Pasha S/o. Late S.G. Abdul Nabi, aged about 40 years.

(Respondent No.3(a) to (e) are
R/o. Post Office Road,
Channarayapatna, Hassan
District)

- f. Nagma Banu D/o. Late S.G. Abdul Nabi, aged about 42 years, R/o. Bar line Road, Hassan.
 - g. Nayeema Banu, D/o. Late S.G. Abdul Nabi, aged about 38 years, R/o. Mudigere, Chikkmagalore District.
- 4 Abdul Bashid S/o. S.G. Abdul Gaffar

a. Tairabi W/o. Late: Abdul Basid,
Since deceased by her LRs 4(a)
to (d).

b. Saleem Pasha S/o. Late Abdul
Bashid
Since deceased by his LRs:

Syeda Banu W/o. Late Saleem
Pasha, Major, R/o. Door
No.24011, Lst State,
Rajivnagar, Mysuru-570028.

c. Tanjeeya Banu D/o. Late Abdul
Bashid, aged about 47 years.

d. Abdul Kalem S/o. Late: Abdul
Bashid, aged about 45 years.

(Respondent No.4(a) to (d) are
R/o. Old Mutton Market,
no.505, Ward No.22, Hassan.

5 C.G. Mohammad Nasir S/o.
Mohammad Ghouse, aged about
55 years.

6. Mir Jewha Ali S/o. Sadiq Ali,
Major, R/o Behind C.J. (Junior
Division) Channarayapatna.

7. Ishrath Unnisa W/o. Syed
Munavar, aged about 65 years.

8. Farzana Begaum W/o. Shahabul
Hussain, aged about 50 years.

9. S.P. Raja Shetty S/o. Late
Puttappashetty, aged about 60
years.

10. Anwar Pasha Sab S/o. Lte
Shahabuddien Sab, aged about
60 years.
11. B.S. Mahalingegowda S/o. Late
Puttaswamygowda, aged about
35 years,(Respondent No.7 to
11 are R/o. Hayath Mohalla, 2nd
Cross, Channarayapatna)
12. Virupaksha S/o.
Chikkannashetty, aged about 54
years.
13. S.K. Shivanegowda, S/o.
Kempegowda, Major.
14. N.P. Lakshmana S/o.
Pttaswamachar, Major
15. C.V. Raju S/o. Vykuntaiah,
Major.
16. Dyavamma W/o. Byrashetty,
aged about 55 years.

(Respondent No.12 to 16 are
R/o. 2Nd Cross, Shanthinagar,
Bagur Road, Channarayapatna)
17. Rangaswamy S/o. Dodda
Thimmachar, aged about 32
years.
18. K.R. Mahesh S/o. Rangachar,
aged about 38 years, R/o. 2Nd
Cross, Shanthinagar, Bagur
Road, Channarayapatna.

19. Javarashetty S/o. Late channappa Shetty, aged about 75 years, R/o 2nd Cross, Shanthinagar, Bagur Road, Channarayapatna.
20. B. Krishna S/o. Byrashetty, aged about 52 years.
21. H.S. Jayanthi @ Satyabhama W/o. B. Krishna, aged about 48 years.
22. Sanna Ulla S/o. C.H. Jaheer Ahamad, aged about 32 years, R/o. Hyath Mohalla, Near Aralikatte, Channarayapatna, Dist: Hassan.

(R.19) to (j), R.3 to 9 Sri.
G.V.V., Advocate)

(R.t to 12 by Sri. D.K.M.,
Advocate)

APPELLANTS IN R.A.
NO.341/2015

1. C.G. Mohammed Nasir S/o. Late Mohammed Gouse, 65 years, R/o. Bagur Road, C.R. Patna Town.
2. Mir jowar Ali S/o. Late Sadik Ali, aged about 65 yers, R/o. Behind Old Civil Judge Court, Channarayapatna Town.
3. Ishrth Unnisa W/o. Syed Munavar, 60 years.

4. Farzana begum W/o. Shahabul Hussain, 60 years.
5. Anwar Pasha Saab S/o. Late Shahabuddin Pasha, 70 years.
6. Mahalinge Gowda S/o. Puttaswamygowda, aged about 45 years.
7. Sana Ulla S/o. C.H. Zaheer Ahmed, 42 years.
8. Farahat Unnisa W/o. Syed Munawar Pasha, 70 years.

(Appellants No.3 to 8 are R/o. Hayath Mohalla, 2nd Cross, C.R. Patna Town and Taluk)

(By Sri.D.K.M., Advocate)

V/s.

RESPONDENTS IN R.A.
NO.341/2015

1. **S.G. Abdul Azeez S/o. Abdul Gaffur**
dead by his legal heirs
 - a. Kirunnisa W/o. Abdul Aziz, aged about 67 years.
 - b. Najmunnisa D/o. Late S.G. Abdul Aziz, aged about 65 years.
 - c. Jameela Banu D/o. Late S.G. Abdul Aziz, aged about 62 years.
 - d. Jazreena Banu W/o. Abdul Kaheem, aged about 60 years.

- e. Shamiunnisa D/o. Late S.G. Abdul Aziz, aged about 58 years.
 - f. Abdul Afiz S/o. Late S.G Abdul Aziz, aged about 56 years.
 - g. Abdul Samad S/o. Late S.G. Abdul Aziz, aged about 54 years.
 - h. Mahamad Musthak S/o. Late S.G. Abdul Aziz, aged about 52 years.
 - i. Abdul Kaleel S/o. Late S.G. Abdul Aziz, aged about 46 years.
 - j. Abdul Sala, S/o. Late S.G. Abdul Aziz, aged about 45 years.
2. S.G. Abdul Rasheed S/o. Late Abdul Gaffar since deceased by his Lrs,
- a. Rehamathai W/o. Abdul Rashid aged about 75 years
 - b. C.R. Abdul Rub, S/o. Late Abdul Rashid, aged about 58 years.
 - c. C.R. Abdul Hamee, aged about 55 years S/o. Late Abdul Rasheed.
 - d. C.R. Abdul Haadi, aged about 48 years S/o. Late Abdul Rasheed.

- e. C.R. Abdul Hakeem S/o. Late Abdul Rasheed, aged about 45 years.
- f. Israth Unnisa D/o. Late: Abdul Rasheed, aged about 60 years.

(Respondent No.2(b) to (f) are R/o. Kanchigara Street, Channarayapatna Town and Taluk)

- 3. S.G. Abdul Nabi
Since deceased by his Lrs:
 - a. Mumtaz Begum W/o. Late S.G. Abdul Nabi, aged about 65 years.
 - b. Sardhr Ahamad Shaheen, S/o. Late S.G. Abdul Nabi, aged about 55 years.
 - c. Jweed Iqbal Ahamad S/o. Late S.G. Abdul Nabi, aged about 50 years.
 - d. Noor Mhamad Galeed S/o. Late S.G. Abdul Nabi, aged about 50 years.
 - e. Safeer Pasha S/o. Late S.G. Abdul Nabi, aged about 45 years.
 - f. Nagma Banu D/o. Late S.G. Abdul Nabi, aged about 47 years, R/o. Bar line Road, Hassan.

- g. Nayeema Banu, D/o. Late S.G. Abdul Nabi, aged about 46 years.

(All are R/o. Kanchigara Street, C.R. Patna Town and Taluk)

- 4 Abdul Bashid S/o. S.G. Abdul Gaffar
Since deceased by her LRs
- a. Tairabi W/o. Late: Abdul Basid, aged about 65 years
- b. Saleem Pasha S/o. Late Abdul Bashid aged about 50 years.
5. Abdul Jabbar S/o Late S.g. Abdul Gaffur, Dead by LR's
- a. Hussain Bi W/o. Late Abdul Jabbar, 80 yers.
- b. Jamrud Pasha S/o. Abdul Jabbar, 80 years.
- c. Mohammed Anwar S/o Abdul Jabbar (Ded by his LR's
1. Jaheeda Begum W/o. Mohammed Anwar, 55 years.
2. Siddiq Pasha S/o. Abdul Jabbar, 50 years.
3. Jeenath Unnisa D/o. Abdul Jabbar, 60 years.
4. Raheema Banu D/o. Abdul Jabbar, 55 years.
5. Naseena Banu D/o. Abdul Jabbar, 52 years.

(All are R/o. Old Post office
Road, C.R. Patna Town and
Taluk)

6. Aameena Bi W/o. Abdul Kalaq
(Dead by her legal heirs are on
record as respondent No.7 and
8)
7. Husain Bi D/o. Abdul Jabbar,
80 years.
8. Fathima Bi D/o. Abdul Kalaq
(Dead by her LR's)
- a. Nisshad Banu D/o. Fathima Bi
@ vajjirjan, 65 years.
- b. Farid Ahmed @ Gouse Sharif
S/o. Fathima Bi, 55 years.
- c. Fayaz Ahmed @ Gouse sharif
S/o. Fathima Bi @ Vajjirjan,
aged about 52 years.
- d. Nzath Banu D/o. Fathima Bi @
Vajirjan, aged about 50 years.
- e. Nsima Banu D/o. Fatima Bi @
Vajirjan, aged about 48 years.

(All are R/o. Near Maxwell
School, Near Honesty Bakery,
Kalyananagara, Basawadi
Extension, Bengaluru City)

9. S.P. Rajashetty S/o. Late
Puttappa Shetty, 65 years.
10. Virupaksha S/o.
Chikkannashetty, aged about
50 years.

11. S.K. Shivanegowda, S/o.
Kempegowda, 50 years.
12. N.P. Lakshmana S/o.
Puttaswamachar, 50 years.
13. C.V. Raju S/o. Vykuntaiah, aged
about 50 years.
14. Dyavamma W/o. Byrashetty,
aged about 60 years.
15. Rangaswamy S/o. Dodda
Thimmachar, aged about 38
years.
16. K.R. Mahesh S/o. Rangachar,
aged about 43 years.
17. Javarashetty S/o. Late
channappa Shetty, aged about
80 years.
18. B. Krishna S/o.Late Byrashetty,
aged about 58 years.
19. H.S. Jayanthi @ Satyabhama
W/o. B. Krishna, aged about 55
years.

(R.9 to 19 are R/o.
Shanthinagara, 2nd Cross,
Channarayapatna Town and
Taluk)

(R.1 to 5, 3(a) to (c) Sri. G.V.V.,
Advocate)
(R9 to 19 Sri. N.T.R., Advocate)

Date and nature of the decree or order appealed against	Judgment and decree dated 17.6.2015 in FDP No.1/2002 on the file of Senior Civil Judge, Channarayapatna.		
Date of institution of the Appeal in R.A.No.286/2015	20.07.2015		
Duration of the Appeal :	<u>Year/s</u> 04	<u>Month/s</u> 05	<u>Day/s</u> 00
Date of institution of the Appeal in R.A.No.341/2015	18.08.2015		
Duration of the Appeal :	<u>Year/s</u> 04	<u>Month/s</u> 04	<u>Day/s</u> 02

(M.N.Saunshi)

4th Additional District and
Sessions Judge, Hassan District.
At Channarayapatna

COMON JUDGMENT

These two appeals are filed under section 96 of CPC challenging the legality and correctness of judgment and decree dated 17.06.2015 passed in FDP No.1/2002 by the then Senior Civil Judge, Channarayapatna.

2. The grounds of the appeals are that:

The impugned judgment is illegal, arbitrary, capricious and not sustainable on the eye of law or on the facts on record. The trial Court has not at all taken into

consideration about compromise entered into between petitioner No.2 and No.3(c) in F.D.P. The trial Court has not taken into consideration about land acquired by the Municipality. The trial Court has not properly appreciated the evidence on record and it has not at all passed speaking order.

3. The facts of the case are as follows:

The petitioners filed FDP No.1/2002 before the trial Court on the basis of preliminary decree passed in O.S.No.15/1983, which was one for partition and separate possession, which came to be decreed in part. The trial Court determined plaintiffs share to the extent of 1/6th. Thereafter, the trial Court appointed Court Commissioner/Surveyor for demarcation of shares of the parties, however the trial Court without giving any opinion on commissioner report and without hearing the parties, hurriedly passed final decree.

4. RA No.341/2015 is filed by purchasers almost under same footing and almost under same grounds. In addition to that, these purchasers want to protect their rights over the disputed property. Since both the appeals are arising from same judgment and decree, for sake of convenience and to avoid repetition, I am passing common judgment.

5. After service of notices, majority of the parties have appeared including some of the LR's, who are brought on record.

6. LCR was called for and secured.

7. Now the points that arise for my consideration are as follows:

Points

1. Whether trial Court has passed speaking order?

2. Whether impugned judgment and decree passed by the trial Court in FDP proceedings without giving findings on commissioner report is sustainable in the eye of law?

3. Whether impugned judgment and decree requires interference?

4. Whether purchasers have made out grounds for protecting their right?

5. What order ?

8. Heard both sides.

9. My findings to the above said points are as follows:-

Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- In the Affirmative

Point No.4:- In the Affirmative

**Point No.5:- As per the final order
For the following**

REASONS

10. Point No.1 to 4 :- Since these points are interlinked with one another, I have discussed these points together to avoid repetition.

11. Since both appeals are arising from same judgment and decree, for the sake of convenience, I am passing common judgment. Unfortunately, the parties are fighting for their rights since 1983, as plaintiffs filed O.S.No.15/1983 before the trial Court for partition and separate possession in respect of 15 schedule properties. It was canvassed before me that all the 15 schedule properties are housing sites or house properties. After hearing both the sides, the trial Court determined share of plaintiffs to the extent of 1/6th in respect of all schedule properties.

12. On going through records, FDP No.1/1997 was filed before then Civil Judge, Holenarasipura and after establishment of Senior Civil Judge Court at Channarayapatna, it was transferred and renumbered as FDP No.1/2002. On going through records, it goes to show that the trial Court for demarcation of shares of the parties including the plaintiffs appointed surveyor/commissioner, however, it has not given its opinion on survey report.

13. The strange thing is that the trial Court passed the impugned judgment and decree on 17.6.2015 without passing any speaking order, which can be seen in order sheet dated 17.6.2015. Very strangely the trial Court passed the order by holding that final decree be drawn as per preliminary decree and on the same day proceedings came to be closed, which is unknown to law. It is settled position of law that in final decree proceedings under Order 20 Rule 8 C.P.C., the duty casts heavily upon Court to demarcate the shares of the parties very clearly and it has to record its opinion on such finding. Interestingly in the instant case, the trial Court neither accepted the Commissioner Report nor given its opinion on survey report or commissioner report. In such a circumstances, the decree passed by the trial Court itself is unexecutable. Therefore, without hesitation I hold that in fact the trial Court ought to have given speaking order particularly its

opinion on commissioner Report. Secondly, without expressing its opinion passing order like “final decree be drawn as per preliminary decree” has no meaning at all. As such impugned judgment and decree requires interference by this Court. Lastly, I am of the opinion that since purchasers are canvassing their rights through registered instruments, their interest shall have to be protected in accordance with law. That apart, the purchasers will step into shoes of their vendors, as such I hold that their interest shall have to be protected and they are at liberty to canvass about their right before trial Court. Therefore, both the sides have fairly admitted that the Trial Court grossly erred in passing final decree without expressing its opinion on commissioner report nor on compromise. Thus, I hold that the interference by this Court is warranted and impugned judgment and decree is liable to be set aside and matter is liable to be remanded back for fresh disposal in accordance with law. So, I answer these points accordingly.

14. Point No.5: So in view of my above said findings and discussions, I proceed to pass the following:-

ORDER

***Both Appeals filed under Section 96 of
CPC are allowed by setting aside the***

judgment and decree dated 17.06.2015 passed in FDP No.1/2002 by the Senior Civil Judge, Channarayapatna.

Matter is remitted back for fresh disposal in accordance with law. The trial Court shall give proper and full opportunity to both the sides for further pleading or further evidence if any.

The trial Court shall pass speaking order and it shall give its opinion on commissioners report and shall demarcate the shares of the parties, particularly plaintiffs. The trial Court shall consider the plea of purchasers in protecting their rights.

Since the matter is very old one, the trial Court shall dispose of the matter expeditiously and both the parties are hereby directed to appear before the trial Court on 04.01.2020 without expecting summons by the trial court.

***Return the LCR along with copy of
this Judgment to the trial court forthwith.***

***Keep the original judgment in
R.A.No.286/2015 and copy be kept in R.A.
No.341/2015.***

(Dictated to Judgment Writer, typed by him directly through Computer, corrected, print-out, signed and then pronounced by me in the open court on this 20th day of December 2019)

(M.N.Saunshi)
4th Additional District and
Sessions Judge, Hassan District.
(Sit at Channarayapatna)