



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 25TH DAY OF MARCH 2026
BEFORE
THE HON'BLE MR. JUSTICE ASHOK S. KINAGI
WRIT PETITION NO. 104689 OF 2023 (GM-CPC)

BETWEEN:

APPANNA S/O. KALLAPPA BADIGER
SINCE DECEASED BY HIS LRS.

1. ANUSUYA W/O. ANNAPPA BADIGER,
AGE: 77 YEARS, OCC:AGRI. & HOMEMAKER,
R/O: MADHABAVI – 591 232, TQ: ATHANI,
NOW AT H.NO.507, PATIL GALLI KILLA
TQ. GOKAK, DIST: BELAGAVI.

2. NEENA W/O. SHANKARANAND PATTAR,
AGE: 47 YEARS, OCC: AGRI. & HOMEMAKER,
R/O: H.NO.507, PATIL GALLI KILLA
TQ. GOKAK-591304, DIST: BELAGAVI.

...PETITIONERS

(BY SRI. C.S SHETTAR, ADVOCATE)

AND:

1. SUVARNA W/O. IRAPPA BADIGER,
AGE: 56YEARS, OCC: HOMEMAKER,
R/O:HULAGABALI- 591 304,
TQ: ATHANI, DIST: BELAGAVI.

2. KALAPPA RAMU BADIGER,
SINCE DECEASED BY LR'S ALREADY
ON RECORD AS R3 TO R5

3. SUNANDA W/O. KALAPPA BADIGER,
AGE: 62 YEARS, OCC: HOMEMAKER,
R/O:JAMBAGI-591 232,
TQ: ATHANI, DIST: BELAGAVI.

4. RAMESH KALAPPA BADIGER,
AGE: 37 YEARS, OCC: AGRI.,
R/O:JAMBAGI-591 232,

MOHANKUMAR
B SHELAR



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TQ: ATHANI, DIST: BELAGAVI.

5. AKSHATA W/O. BASAVARAJ BADIGER
@ SUTAR, AGE: 32 YEARS, OCC: HOMEMAKER,
R/O: SINDUR – 416 404,
TQ: JATH, DIST: SANGALI.

6. SHANTA W/O. PARAMANAND BADIGER
@ SUTAR, AGE: 50 YEARS, OCC: HOMEMAKER,
R/O: NAGANUR P.K – 591 240,
TQ: ATHANI, DIST: BELAGAVI.

7. CHANDU KADAPPA @ BHIMAPPA BADIGER,
AGE: 42 YEARS, OCC: AGRI.,
R/O:GUNDEWADI – 591 304,
TQ: ATHANI, DIST: BELAGAVI.

8. SAVITRI @ POOJA
W/O. NANDAKUMAR SUTAR,
AGE: 38 YEARS, OCC: HOMEMAKER,
R/O: SAVALAJ- 416311232, TQ: TASAGAVI,
DIST: SANGLI, STATE. MAHARASHTRA.

9. APPANNA GANGAPPA HADAPAD,
AGE: 88 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

10. ANNAPPA GANGAPPA HADAPAD,
AGE: 79 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

11. KAMALAVVA W/O. GIRIMALLA HADAPAD,
AGE: 76 YEARS, OCC: HOMEMAKER,
R/O: SHEGUNASHI – 591 220,
TQ: ATHANI, DIST: BELAGAVI.

12. SIDDU GANGAPPA HADAPAD,
AGE: 74 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

13. DHAREPPA GANGAPPA HADAPAD,



AGE: 52 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

14. NINGAPPA GANGAPPA HADAPAD,
AGE: 69 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

15. YAMANAVVA W/O. GANGAPPA HADAPAD,
SINCE DECEASED BY HER LR'S ALREADY ON
RECORD AS R9 TO R14 & R16 TO R18

16. SUBHASH DHAREPPA HADAPAD,
AGE: 63 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

17. SHIVANNA DHAREPPA HADAPAD,
AGE: 60 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

18. SHOBHA W/O. DHAREPPA HADAPAD,
AGE: 50 YEARS, OCC: HOMEMAKER,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

19. ANNAPPA CHANDRAVVA BERAD,
SINCE DECEASED BY LR'S ALREADY ON
RECORD AS R20 TO R23

20. ASHOK ANNAPPA BERAD @ NAIK,
AGE: 55 YEARS, OCC: AGRI.,
R/O: MADHABAVI- 591 232,
TQ: ATHANI, DIST: BELAGAVI.

MAHADEV ANNAPPA BERAD
SINCE DECEASED BY HIS LRS.

21. LAXMI D/O. MAHADEV BERAD @ NAIK
AGE: 19 YEARS, OCC: HOMEMAKER,
R/O: MADHABAVI - 591 232,
TQ: ATHANI, DIST: BELAGAVI.



22. DHANASHRI D/O. MAHADEV BERAD
@ NAIK, AGE: 18 YEARS,
R/O: MADHABAVI – 591 232,
TQ: ATHANI, DIST: BELAGAVI.

23. MANOHAR ANNAPPA BERAD,
AGE: 45 YEARS, OCC: AGRI.,
R/O: MADHABAVI– 591 232,
TQ: ATHANI, DIST: BELAGAVI.

24. REKHA W/O. KALLAPPA NAIK @ GASTI,
AGE: 32 YEARS, OCC: HOMEMAKER,
R/O. WADDI – 416 410,
TQ: MIRAJ, DIST: SANGALLI.

25. SUNIL MARUTI PATIL,
AGE: 32 YEARS, OCC: AGRI.,
R/O: MADHABAVI– 591 232,
TQ: ATHANI, DIST: BELAGAVI.

26. CHANDRALEKA W/O. SANJAY CHAVAN,
AGE: 29 YEARS, OCC: HOMEMAKER,
R/O: MADHABAVI– 591 232,
TQ: ATHANI, DIST: BELAGAVI.

...RESPONDENTS

(R2, R15 & R19 DECEASED,
R3 TO R5 ARE LR'S OF DECEASED R2,
R9 TO R14 & R16 TO R18 ARE LR'S OF DECEASED R15
R20 TO R23 ARE LR'S OF DECEASED R19,
R1, R3 TO R6, R9, R10, R12, R13, R14, R16, R17,
R18, R20, R21, R22 TO R25 ARE SERVED.
R7, R8, R11 AND R26 NOTICE HELD SUFFICIENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT OF
CERTIORARI QUASHING THE IMPUGNED ORDER PASSED BY I ADDL.
CIVIL JUDGE AND JMFC, ATHANI IN FDP NO.43/2021 ON I.A.NO.V
DATED 21-04-2023 VIDE ANNEXURE-E & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B'
GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER
(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. The petitioners filed this writ petition challenging the order on I.A.No.V dated 21.04.2023 passed in FDP No.43 of 2021 by the learned I Additional Civil Judge and JMFC Court, Athani.

2. Brief facts leading rise to the filing of this writ petition are as follows:

3. The father of petitioner No.2 and husband of petitioner No.1, namely, Appanna filed a suit in O.S. No.345 of 1989 for partition and separate possession against his mother, sister and brother. The sister executed a Will in favour of Appanna on 12.11.2000. The trial Court decreed the suit upholding the Will, but, however, granted a notional share to the sister vide judgment and preliminary decree dated 01.12.2010. The petitioners initiated final decree proceedings in F.D.P. No.43 of 2021. The petitioners filed IA No.V seeking modification of her share as per the provisions of Hindu Succession (Amendment) Act, 2005. Respondent No.5E filed objections to I.A.V. The trial Court dismissed the application. Hence, this petition.



4. Notices were issued to the respondents. Despite service of notice, none appeared for the respondents and remained unrepresented.

5. Heard the arguments of the learned counsel to the petitioners.

6. Learned counsel to the petitioners submits that, any number of preliminary decree can be passed in view of the proposition laid down by the Hon'ble Apex Court in case of ***Phoolchand and another v. Gopal Lal***¹ and also placed reliance on the order passed by this Court in the case of ***Prabhu Gowda v. Smt. Parvathewwa and others*** in WP No.100246 of 2026 disposed of on 05.03.2026. Hence, on these grounds, he prays to allow the writ petition.

7. Perused the records and consider the submissions of the learned counsel for the petitioners.

It is an undisputed fact that one Appanna had filed a suit in O.S. No.345 of 1989 for the relief of partition and separate

¹ 1967 Supreme Court 1470



possession against mother, sister and brother. Appanna's sister had executed a will bequeathing her share in favour of Appanna vide Will dated 12.11.2000. The said suit in O.S. No.345 of 1989 came to be decreed upholding the Will executed by the sister of Appanna in favour of Appanna, but however granted notional share to his sister. The petitioners filed final decree proceedings in FPD No.43 of 2021. The petitioners filed an application in I.A.V seeking for modification of the share in view of the proposition laid down by the Hon'ble Apex Court in the case of **Vineeta Sharma v. Rakesh Sharma and others**², wherein daughters are treated as coparceners and entitled for equal share with that of a son. The said application was rejected by the trial Court. The Hon'ble Apex Court in the case of **Prema Vs. Nanje Gowda and Others**³, has held in paragraph Nos.17 to 19 as follows:

"17. In this case, the Act was amended by the State Legislature and Sections 6-A to 6-C were inserted for achieving the goal of equality set out in the Preamble of the Constitution. In terms of Section 2 of Karnataka Act 23 of 1994, Section 6-A came into force on 30-7-1994 i.e. the date on which the amendment was published. As on that day, the

² (2020) 9 SCC 1

³ (2011) 6 SCC 462



final decree proceedings were pending. Therefore, the appellant had every right to seek enlargement of her share by pointing out that the discrimination practised against the unmarried daughter had been removed by the legislative intervention and there is no reason why the court should hesitate in giving effect to an amendment made by the State Legislature in exercise of the power vested in it under Article 15(3) of the Constitution.

18. The issue which remains to be considered is whether the learned Single Judge of the High Court was justified in refusing to follow the law laid down in S. Sai Reddy v. S. Narayana Reddy [(1991) 3 SCC 647] on the ground that the same was based on the judgment of the three-Judge Bench in Phoolchand v. Gopal Lal [AIR 1967 SC 1470] and a contrary view had been expressed by the larger Bench in Venkata Reddy v. Pethi Reddy [AIR 1963 SC 992].

19. In Phoolchand v. Gopal Lal [AIR 1967 SC 1470] this Court considered the question whether the preliminary decree passed in a partition suit is conclusive for all purposes and the court before whom final decree proceedings are pending cannot take note of the changes which may have occurred after the passing of the preliminary decree. The facts of that case were that appellant, Phoolchand had filed a suit in 1937 for partition of his 1/5th share in the plaint scheduled properties. Sohanlal (father of the appellant), Gopal Lal (brother of the appellant), Rajmal [minor adopted son of Gokalchand (deceased), who was another brother of the appellant] and Smt Gulab Bai (mother of the appellant) were impleaded as the defendants along with two other persons. The suit was contested up to Mahkma Khas of the former State of Jaipur and a preliminary decree for partition was passed on 1-8-1942 specifying the shares of the appellant and the four defendants. Before a final decree could be passed, Sohanlal and his wife Smt Gulab Bai died. Gopal Lal claimed that his father Sohanlal had executed a will in his favour on 2-6-1940 and bequeathed all his property to him. Appellant Phoolchand challenged the genuineness of the will. He also claimed that Smt Gulab Bai had executed a sale deed dated 19-10-1947 in his favour, which was duly registered on 10-1-1948. Gopal Lal challenged the sale deed by contending that Gulab Bai had executed the sale deed because she was a limited owner of the share in the ancestral property. The trial court held that the will allegedly executed by Sohanlal in



favour of Gopal Lal had not been proved but the sale deed executed by Gulab Bai in favour of Phoolchand was valid. As a sequel to these findings, the trial court redistributed the shares indicated in the preliminary decree. As a result, Phoolchand's share was increased from one-fifth to one-half and Gopal Lal's share was increased from one-fifth to one-fourth and that of Rajmal from one-fifth to one-fourth. The High Court allowed the appeal filed by Gopal Lal and held that Gulab Bai was not entitled to sell her share in favour of appellant Phoolchand. The High Court also held that the will executed by Sohanlal in favour of Gopal Lal was genuine. One of the points considered by this Court was whether there could be more than one preliminary decree."

8. Further, it is settled that, the court can draw more than one preliminary decree. The trial Court, without considering the proposition laid down by the Hon'ble Apex Court in the case of **Prema** (supra) and in the case of **Ganduri Koteshwaramma and another v. Chakiri Yanadi and another**⁴ has passed the impugned order. The impugned order passed by the trial Court is arbitrary and erroneous.

9. Accordingly, I proceed to pass the following:

ORDER

The writ petition is allowed.

⁴ (2011) 9 SCC 788



NC: 2026:KHC-D:4676
WP No. 104689 of 2023

The Order on I.A. No.V dated 21.04.2023 passed in FDP No.43 of 2021 by the learned I Additional Civil Judge and JMFC, Athani, is set aside. Consequently, I.A.V is allowed.

Pending applications, if any, stand disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE

kmv
CT: BSB