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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 26<sup>TH</sup> DAY OF SEPTEMBER, 2025****BEFORE****THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE****REGULAR SECOND APPEAL NO. 807 OF 2014 (PAR)****BETWEEN:**

1. VEERABHADRAPPA  
S/O. KARI BASAPPA, AGED ABOUT 61 YEARS,
2. SHIVAMURTHY,  
S/O KARIBASAPPA, AGED ABOUT 57 YEARS,
3. MANJAPPA  
S/O KARIBASAPPA, AGED ABOUT 55 YEARS,
4. MAHESHWARAPPA,  
S/O KARIBASAPPA, AGED ABOUT 53 YEARS,

ALL ARE R/AT GONDICHATNAHALLI VILLAGE,  
SHIVAMOGGA TALUK & DISTRICT,  
SHIVAMOGGA-577 202.

...APPELLANTS

(BY SRI. P.N.HARISH, ADVOCATE)

**AND:**

1. CHANNAPPA GOWDA D  
DEAD BY LR'S
- 1A. RUDRAMMA,  
W/O. LATE CHANNAPPA GOWDA,  
AGED ABOUT 80 YEARS,
- 1B. REVANASIDDAPPA,  
S/O. LATE CHANNAPPA GOWDA,  
AGED ABOUT 60 YEARS,





1C. BHUVANESHWARA  
S/O.LATE CHANNAPPA GOWDA,  
AGED ABOUT 59 YEARS,

1D. VISHWANATHA  
S/O.LATE CHANNAPPA GOWDA,  
AGED ABOUT 55 YEARS,

1E. MANJUNATHA,  
S/O.LATE CHANNAPPA GOWDA,  
AGED ABOUT 47 YEARS,

1F. NAGARAJA,  
S/O.LATE CHANNAPPA GOWDA,  
AGED ABOUT 43 YEARS,

R1(A) TO R(F) ARE  
R/O. GONDICHATNAHALLI VILLAGE,  
SHIVAMOGGA TALUK & DISTRICT,  
SHIVAMOGGA - 577 202.

1G. GOWRAMMA  
W/O.BASAVARAJAPPA,  
D/O. LATE CHANNAPPA GOWDA,  
AGED ABOUT 54 YEARS,  
R/O. GOVINDAKOVI VILLAGE,  
HONNALLI TALUK - 577217,  
DAVANAGERE DISTRICT.

...RESPONDENTS

(BY SRI. G.C.SHANMUKHA, ADVOCATE FOR R1(A AND F)  
SRI. M.V. MAHESWARAPPA, ADVOCATE FOR R1 (C AND G)  
SRI. UMESH MOOLIMANI, ADVOCATE FOR R1(B, D AND E))

THIS RSA IS FILED U/S.100 OF CPC., AGAINST THE  
JUDGEMENT & DECREE DATED 22.04.2014 PASSED IN  
R.A.NO.122/2013 ON THE FILE OF THE I ADDITIONAL SENIOR  
CIVIL JUDGE AND CJM, SHIMOGA, DISMISSING THE APPEAL BY  
CONFIRMING THE DECREE DATED 16.03.2013 PASSED IN  
FDP.NO.11/1999 ON THE FILE OF THE I ADDL. CIVIL JUDGE  
AND JMFC, SHIMOGA.



THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

### **ORAL JUDGMENT**

This Second Appeal arises from the decree in a Final Decree Proceeding, which is confirmed in the Regular Appeal under Section 96 of the Code of Civil Procedure.

2. In terms of the decree passed in FDP No.11/99, the Court has accepted the scheme of partition. Hence, the respondents in Final Decree Proceeding are before this Court in Second Appeal.

3. FDP No.11/99 is filed pursuant to the decree in O.S.No.1768/1989 which later was modified on 26.07.2010 pursuant to the compromise in RSA No.1314/2007. Later, the parties applied to this Court for modification of the compromise decree dated 26.07.2010 on the premise that the extent of land in Sy.No.25 of Gondichatnahalli Village, Shivamogga Taluk, is less than what is mentioned in the Record of Rights. Thus, based on the application filed by the



parties at I.A.No.2/2012, the earlier judgment dated 26.07.2010 was modified vide order dated 21.06.2012.

4. The parties agreed on the division of the properties in a particular manner in respect of the properties bearing Sy.Nos.113, 154 and 164 of Gondichatnahalli Village, Shivamogga Taluk. However, in respect of Sy.No.25, parties sought a direction from the Final Decree Court to measure the properties and to divide the properties into two equal shares.

5. In FDP No.11/99, the Court Commissioner (Surveyor) was appointed. The Surveyor divided 7 acres 12 guntas in Sy.No.25 into three parts. However, division is not made in respect of entire 10 acres 22 guntas, for which there was a decree for partition. Out of three parts, two divisions were allotted to one branch and one to another branch. The extent of lands allotted to each branch is same.

6. Both Courts granted the decree for only 7 acres 12 guntas and not 10 acres 22 guntas as per the preliminary decree.



7. This appeal was admitted on 27.06.2016 to resolve the following substantial questions of law:

- "i) Were the courts below justified in drawing the final decree proceeding as per the joint memo when the Commissioner has refused for partition to an extent of 10 acres 22 guntas of land in Sy. No.25 for the reason of non-inclusion of 3 acres 10 guntas while affecting durast of the land?*
- ii) Whether the sharers are entitled to partition and separate possession of only those portions of agricultural land which were phoded (sic) and effective durast was made by the concerned survey and revenue departments, or on the basis of actual possession of the land by the family members?*
- iii) Whether the judgment and decree of the courts below are vitiated on account of wrong appreciation of vital documents and perverse consideration of documents and evidence on record?*



8. Learned counsel for the appellants would submit that the Court Commissioner, in the cross-examination, has admitted that the total extent of land available to the family of the appellants and respondents is 10 acres 22 guntas. Thus, urged that the scheme of partition dividing only 7 acres 12 guntas is erroneous and there has to be a division of the entire 10 acres 22 guntas.

9. Learned Counsel for the respondents urged that the division of the extent of land which is actually available for partition is justified, though it is less than what is reflected in the property records.

10. It is noticed from the report that the surveyor has partitioned only 7 acres 12 guntas between the appellants and the respondents, though the decree is for partition and separate possession of 10 acres and 22 guntas. The remaining portion of 3 acres and 10 guntas of land is marked in the centre of the sketch prepared by the Surveyor.

11. In the cross-examination, the Surveyor stated that he is unable to find out who is in actual possession of



the property measuring 3 acres 10 guntas demarcated in the central portion of the survey sketch.

12. The relevant portion of Surveyor's cross examination would read as under:

"ಏಟಂ ನಂ 3 ಇದರ ಅಳತೆ 10 ಎಕರೆ 22 ಗುಂಟೆ ಎಂದರೆ ನಿಜ. ಸದರಿ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಗಳು ಇಬ್ಬರೂ ಸಾಗು ಮಾಡುತ್ತಿದ್ದರು. ಸನಂ 25ರ ಒಟ್ಟು ಅಕಾರಬಂಧ್ ಮತ್ತು ಟಿಪ್ಪಣಿಯಲ್ಲಿಯ ವಿಸ್ತೀರ್ಣ 16 ಎಕರೆ 9 ಗುಂಟೆ ಇದೆ. 10 ಎಕರೆ 22 ಗುಂಟೆ ಜಮೀನಿನ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿ 2 ಭಾಗಗಳಲ್ಲಿ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದರು. ಸನಂ 25ಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮಾಡಿದ ಸ್ಕೆಚ್ ನಿಸಿ-3 ರಂತೆ ಇರುತ್ತದೆ ಎಂದರೆ ನಿಜ. ಸದರಿ ನಿಸಿ 3 ರಲ್ಲಿ 3 ಭಾಗಗಳಾಗಿ ತೋರಿಸುತ್ತೇನೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಮುಂದುವರೆದು ಸನಂ 25ರಲ್ಲಿ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿ ಜಂಟಿಯಾಗಿ 2 ಭಾಗಗಳಲ್ಲಿ ಸ್ವಾಧೀನದಲ್ಲಿದ್ದಾರೆ. ಮಧ್ಯದಲ್ಲಿ ತೋರಿಸಿದ ಭಾಗ ಪೋಷು ಆಗದ ಕಾರಣ ಯಾರು ಸ್ವಾಧೀನದಲ್ಲಿರುವುದಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ ನಿಮಗೆ 10 ಎಕರೆ 22 ಗುಂಟೆ ವಿಭಾಗ ಮಾಡಲು ಆದೇಶ ಬಂದಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿ ಇತ್ತೀಚಿನ ಚಾಲ್ತಿ ಪಹಣಿ ಅಷ್ಟೆ ಇದ್ದು ಅದರಂತೆ ಅರ್ಧ ಭಾಗ ವಿಂಗಡೆ ಮಾಡಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ 7 ಎಕರೆ 12 ಗುಂಟೆ ವಿಭಾಗ ಮಾಡಲು ನ್ಯಾಯಾಲಯದ ಆದೇಶ ಬಂದಿಲ್ಲ ಎಂದರೆ ನಿಜ".

13. From the evidence extracted above, it is evident the family possessed 10 acres 22 guntas in the property bearing Sy.No.25. The decree is for the partition and separate possession of 10 acres 22 guntas of land. The Court



Commissioner was required to demarcate 10 acres 22 guntas of land belonging to the appellants and the respondents, in Sy.No. 25, which measures around 16 acres 9 guntas as per revenue records and thereafter, should have divided the properties equally between the appellants and the respondents.

14. The Surveyor has partitioned only 7 acres and 12 guntas. The Surveyor cannot allot a lesser share than what is awarded in the decree on the premise that he is unable to ascertain who in possession of the property. It is nobody's case that a third party is in possession of the property. Moreover the Surveyor does not say that the extent of 10 acres 22 guntas is not available in Sy.No.25.

15. The Trial Court and First Appellate Court have not properly appreciated the evidence of the Court Commissioner in the cross-examination.

16. Hence, the impugned judgments and decrees insofar as Sy.No.25 are set aside. The matter is remitted to the Trial Court to effect a fresh division of Sy.No.25 into two





parts in an extent of 10 acres 22 guntas, and to allot half share jointly to the appellants, and half share jointly to the respondents. If the total extent is less than 10 acres 22 guntas, the division shall take place in the available extent.

17. However, before concluding, few things need to be noticed.

This Second Appeal arose from a final decree proceeding. The suit for partition and separate possession filed in the year 1989 ended in a settlement on 26.07.2010 and later modified on 21.06.2012 in RSA No.1314/2007. Pursuant to the settlement, appellants are entitled half share and the respondents are entitled to a half share. Actual division was agreed to take place in the Final Decree proceeding through the process of the Court in respect of Sy.No.25 as agreed in the joint memo filed in RSA No.1314/2007.

18. However, even 13 years since the preliminary decree passed by the High Court, the dispute is not completely resolved.



19. When it comes to delay in court proceedings, partition suits occupy the top of the list, among various categories of litigation. The reasons are plenty. Probably one of the prime reasons is the procedure of passing the preliminary decree and final decree and providing **two appeals** up to the High Court (If the valuation of the plaintiff's share is less than Rs.10 lakhs), both on preliminary decree and final decree.

20. The flaw in the procedure of closing the suit and insisting on a petition/application to seek the final decree is flagged by the Apex Court in **Shub Karan Bubna v. Sita Saran Bubna, (2009)9 SCC 689**. The observations in paragraph No.28 and 29 of the said judgment are extracted below:

*"28. We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/ amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief.*



*29. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief."*

In ***Kattukandi Edathil Krishnan & Anr. Versus Kattukandi Edathil Valsan & Ors.***<sup>1</sup> the Apex Court has proceeded to issue further guidelines as under.

*" 33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter*

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<sup>1</sup> (2022) 16 SCC 71



*sine die, as has been done in the instant case. There is also no need to file a separate final decree proceeding. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.*

21. Though the Apex Court has flagged the issue and felt that the law requires amendment, way back in 2009, the Parliament/Legislature is yet to amend the law.

22. It is high time to revisit the law and to suitably amend it to facilitate the quick resolution of final decree proceedings. One of the reasons why the final decree proceedings take a longer time is that the person in exclusive possession of the property, or a larger portion of the property for which there is a decree for partition and



separate possession, gets unduly benefited by the delay and he does everything to delay the proceeding.

23. With a view to invite a healthy discussion among the stakeholders, for evolving a effective and purposive procedure, the Court broadly points to the following aspects where there is a scope for an appropriate legislative framework.

- (a) Further listing of the suit, after the judgment providing a preliminary decree, to proceed further to draw a Final Decree, with a new nomenclature and number.
- (b) Procedure relating to pleadings, if any, required in the Final Decree Proceeding where parties seek *mense* profits or any other relief relating to the division and allotment of shares
- (c) To expressly enable the Court, as an interim measure, in the Final Decree Proceeding, to direct the party in exclusive possession or a larger portion of the property, to deposit before the



Court the preliminary decree holder's share in the profits, if any, derived from the income-yielding property.

- (d) To deliver the exclusive possession of the property/ies allotted to respective shares/ to recover the mense profits in the Final Decree Proceeding itself, instead of one more execution proceeding based on the Final Decree.
- (e) To provide for a direction to the jurisdictional Tahasildar, Local Body or other authorities to change the entries in the property records pursuant to the Final Decree as provided in Section 132(3) of Karnataka Land Revenue Act, 1964.
- (f) To restrict the scope of First Appeal and Regular Second Appeal or to abolish the Appeal against the Final Decree, where there is no claim relating to *mense* profits, by substituting the right of appeal with right of revision by properly defining



the scope of the revision. (Since the rights of the parties are adjudicated in terms of preliminary decree, and the law provides for appeals up to the High Court against the preliminary decree.)

- (g) In a case where there are only two sharers, and the properties are to be divided into two parts, instead of proceeding with conventional division by appointing surveyor, in the first place, either of the party be asked to propose the division and other party be given the first option to chose the property as per the division proposed by first party referred to above. In such a scenario, the party proposing to divide the property will have to be allotted the property not chosen by the other party.

24. Before concluding, it is clarified that the Court is not legislating any law. The Court has no such power. The endeavor is only to invite the attention of the stakeholders to resolve the issue, which unfortunately has been lingering or



haunting (rather) since the Code of Civil Procedure, 1908 or may be much earlier.

25. Hence the following:

**ORDER**

- (i) Appeal is ***allowed in part.***
- (ii) The judgment and decree dated 22.04.2014 in R.A.No.122/2013 passed by I Additional Senior Civil Judge, Shivamogga, are set aside in respect of Sy. No.25.
- (iii) The judgment and decree dated 16.03.2013 in Final Decree Proceeding No.11/1999 on the file of I Additional Civil Judge, Shivamogga, are set aside in respect of Sy. No.25.
- (iv) The Trial Court is directed to effect partition in Sy. No.25 measuring 10 acres 22 guntas in Gondhichatnahalli village, Taluk: Shivamogga.
- (v) Since there are only two branches, one of the branches, (either the appellants or respondents) shall be given the option to propose the division, and the other branch





shall have the first option to choose the property so proposed to be divided. If division takes place as aforesaid, the officer from the revenue department be directed to prepare the sketch and fix the boundaries of the properties so divided.

- (vi) If the parties do not agree on the procedure contemplated in paragraph (v) the Court Commissioner shall be appointed to effect the division of the property.
- (vii) In any case, if it is found that the extent of land is less than 10 acres 22 guntas, the division shall be carried out in the available extent of land.
- (viii) After the division of the property, the Final Decree Court shall issue necessary direction to change the property records to the jurisdictional Deputy Commissioner as contemplated in Section 132(3) of the Karnataka Land Revenue Act, 1964.
- (ix) If the parties to the proceeding intend to get the final decree registered in respect of other properties other than Sy. No.25, for which the final decree has attained finality, the pendency of the Final Decree Proceeding in



respect of Sy.No.25 shall not come in the way of registration of the decree.

- (x) Registry to send the records forthwith.
- (xi) Parties shall appear before the Trial Court on **23.10.2025.**

**SD/-**  
**(ANANT RAMANATH HEGDE)**  
**JUDGE**

BRN  
List No.: 1 Sl No.: 14