



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO. 100455 OF 2019

BETWEEN:

MADHUKAR S/O. BABANI BAIKERIKAR,
AGE: 76 YEARS, OCC: BUSINESS,
HOTEL ASHOK, KARWAR-581301.

...APPELLANT

(BY SRI A.R. PATIL AND
SRI S.G. KADADAKATTI, ADVOCATES)

AND:

U.F.M. VENKATARAY S/O. BABANI BAIKERIKAR
SINCE DECEASED BY HIS LRS,

1. U.F.M. SRI. GOVIND
S/O. VENKATRAYA BAIKERIKAR,
AGE: 65 YEARS,
2. SRI. SANJAYA S/O. VENKATRAYA BAIKERIKAR
AGE: 55 YEARS,
3. SMT. SHYAMALA W/O. ASHOK ANVEKAR
AND D/O. VENKATRAYA BAIKERIKAR
AGE: 70 YEARS,



4. SMT. SUREKHA W/O. PRAKASH VERNEKAR
AND D/O. VENKATRAYA BAIKERIKAR
AGE: 60 YEARS,

ALL ARE R/O: HALAGA VILLAGE,
C/O. UFM SRI. GURUDAS
S/O. VENKATRAYA BAIKERIKAR,
R/O: HALAGA VILLAGE,
KARWAR TALUK-581328.

5. SMT. MEERABAI @ LAXMIBAI
W/O. VISHNU ANVEKAR,
C/O. CHANDRAKANT ANVEKAR,
1834, A WARD, TARABAI ROAD,
AGE: 86 YEARS,
OCC: HOUSEHOLD DUTIES,
C/O. V.K. ANVEKAR,
RUDHI, 46, BLOCK NO.11,
NEAR RANKALA AMBI TANK,
KOLHAPUR TOWN,
MAHARASHTRA STATE-416003.

6. SMT.PREMABAI @ NIRMALABAI
W/O. VITHAL SHET,
AGE: 83 YEARS,
R/O: PATIL GALLI, HOUSE NO.575,
BELGAUM TOWN, DIST: BELAGAVI,
NOW R/AT: AVERSA, ANKOLA,
DIST: U.K-581316.

MANOHAR S/O. BABANI BAIKERIKAR
SINCE DECEASED BY HIS LRS,

7. MEERABAI @ SUDHABAI
W/O. MANOHAR BAIKERIKAR,
AGE: 68 YEARS, OCC: HOUSEHOLD,
R/O: HABBUWADA, KARWAR-581301.



8. BHARATI W/O. AZAD VERNEKAR
AGE: 58 YEARS, OCC: HOUSEHOLD,
R/O: INDRADHANUSHYA,
"A" BUILDING, BORDA FATRODA,
MADAGAON, GOA-403602.
9. ANIL S/O. MANOHAR BAIKERIKAR
AGE: 53 YEARS, OCC: BUSINESS,
R/O: HABBUWADA, KARWAR-581301.

SMT.LEELABAI @ RATNAVATI
W/O. MADHUKAR KUDALKAR,
SINCE DECEASED BY HER LRS,
10. UFM SRI.SUNIL
S/O. MADHUKAR KUDALKAR,
AGE: 45 YEARS,
11. SMT.MANGALA D/O. MADHUKAR KUDALKAR
AGE: 45 YEARS,
12. SMT. MANJULA D/O. MADHUKAR KUDALKAR
AGE: 44 YEARS,
13. SMT. SHAKU D/O. MADHUKAR KUDALKAR
AGE: 43 YEARS,
14. SMT. MAMTA D/O. MADHUKAR KUDALKAR
AGE: 40 YEARS,
15. SMT.SHANTA D/O MADHUKAR KUDALKAR
AGE: 39 YEARS,

ALL ARE R/O: 7TH CROSS,
PADMANABHANAGAR,
POST: NANDANAGADDA, KARWAR,
C/O. UFM SRI. SUNIL
S/O. MADHUKAR KUDALKAR,
R/O: 7TH CROSS, PADMANABHA NAGAR,
POST: NANDANAGADDA, KARWAR-581304.



16. TUKARAM S/O. BABANI BAIKERIKAR
AGE: 77 YEARS, OCC: JEWELRY BUSINESS,
R/O: HALGA, TQ: KARWAR-581328.
17. SMT. NALINI @ VASUDHA
W/O. VASANT VERNEKAR,
AGE: 73 YEARS, OCC: HOUSEHOLD DUTIES,
C/O. VASANT RAMA VERNEKAR,
TEACHER, CHAR RASTA,
CANACONA, GOA-403702.
18. SMT. KUNDABAI @ HEMABAI
W/O. RAMESH ANVEKAR,
AGE: 71 YEARS, OCC: HOUSEHOLD DUTIES,
C/O. RAMESH Y. ANVEKAR,
ENGINEER IN TOURISM DEPARTMENT,
KALAPUR, BAMBOLIM VASUDHA COLONY,
PANJIM, GOA-407202.
19. ASHOK S/O. BABANI BAIKERIKAR
AGE: 69 YEARS, OCC: MEDICAL OFFICER,
GOVERNMENT HOSPITAL, ALIBAGH
RAYAGHAD DISTRICT,
MAHARASHTRA STATE-402201.

...RESPONDENTS

(BY SRI. SURESH S. BHAT, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE, PRAYING TO, SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 25-04-2019 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE, KARWAR IN F.D.P.NO.9/2008 BY ALLOWING THIS APPEAL AND ETC.

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

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is preferred by the petitioner in FDP No.9/2008 on the file of Principal Senior Civil Judge, Karwar. The preliminary decree passed in O.S.No.87/1989 on the file of Principal Senior Civil Judge, Karwar was put into final decree proceedings in which Commissioner was appointed. He gave a report based on which the FDP Court ordered for drawing up final decree. Being not satisfied with the final decree, the petitioner has approached this Court.

2. Heard Sri A.R.Patil learned counsel for the appellant and Sri Suresh S.Bhat learned counsel for respondents No.1 to 19.

3. It is the submission of Sri A.R.Patil that the FDP Court has blindly accepted the Commissioner's report without applying mind in the sense that there was no opportunity for the petitioner to raise objection for the measurements made by the Commissioner. He also submitted that the distribution of the properties does not appear to be equitable and the interest of the petitioner has been totally ignored. The ground realities



have not been considered while making allotment of shares and moreover the Commissioner himself made allotment of shares which power he did not have.

4. On the other hand, Sri Suresh S.Bhat submits that allotment of shares has properly been made and there is no infirmity. He submits that the Commissioner was a surveyor and having conducted the survey, he drew up a sketch indicating the measurements of the share of every party. The impugned order shows application of mind and therefore appeal deserves to be dismissed.

5. We have perused the impugned order and also all the proceedings drawn by the Commissioner. Having perused the Commissioner's report, we may at the outset state that apparently the Commissioner appears to have exceeded his jurisdiction. His duty was just to measure the land and bifurcate the properties in accordance with the preliminary decree. Instead he had gone to the extent of making allotment of shares to the parties which power can be exercised by the Court alone. Secondly we notice that the total extent of the property available for partition does not match with the



measurements shown by the Commissioner in his report. There is mismatch of the extent of lands. The allotment of shares made by the Commissioner should not have been accepted by the court without hearing the parties. This kind of application of mind being not forthcoming, we are of the opinion that entire Commissioner report has to be rejected and consequently the matter requires to be remanded to the FDP Court for taking measurements once again in accordance with the preliminary decree and allotting the shares by working out equities by giving opportunity to the parties. In this view the following:

ORDER

Appeal is allowed. Order dated 25.04.2019 in FDP No.9/2008 is set aside. The matter stands remanded to the Court of Principal Senior Civil Judge, Karwar.

The Trial Court shall appoint a fresh Commissioner and after obtaining the report, the Trial Court shall itself allot the shares to the parties by calling objections or giving opportunity to the



parties to have their say on the Commissioner's report.

All the parties shall appear before the Court on 18.01.2025.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE

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LIST NO.: 1 SL NO.: 26