



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 5TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100532 OF 2023 (PAR/POS)

BETWEEN:

SRI. ANDANAGOUDA S/O. DODDANAGOUDA KULKARNI,
AGE: 58 YEARS, OCC. BUSINESS,
R/O. BHUDIHAL, TQ. MUNDARAGI,
DIST. GADAG, PIN-582118.

...APPELLANT

(BY SRI. SHARNAPPA S. KOLIWAD, ADVOCATE)

AND:

1. SMT. CHINNAKKA W/O. PARASHURAM METI,
AGE: 56 YEARS, OCC. HOUSEHOLD WORK,
R/O. BASARAKODA, TQ. HAGARIBOMMANAHALLI,
DIST. VIJAYANAGAR, PIN- 583212.
(NOW AT TQ. MUNDARGI,
DIST. GADAG, PIN- 582118)
2. SRI. CHANNABASANGOUDA
S/O. DODDANAGOUDA KULKARNI,
AGE: 69 YEARS, OCC. RETIRED WORKER,
R/O. AMARKERI BADAVANE,
TQ. DIST. RAICHUR, PIN- 584101.
3. SMT. FAKKIRAMMA W/O. SHIVAPPA HAVERI,
AGE: 69 YEARS, OCC. HOUSEHOLD WORK,
C/O. LAXMI NAGAR,
R/O. TQ. DIST. DHARWAD, PIN- 580001,
R/O. AMARKERI BADAVANE,
TQ. DIST. RAICHUR, PIN- 584101.
4. SMT. AKKAMMA D/O. DODDANAGOUDA KULKARNI,
AGE: 65 YEARS, OCC. RETIRED WORKER,

YASHAVANT
NARAYANKAR

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R/O. MUNDARAGI, TQ. MUNDARAGI,
DIST. GADAG, PIN- 582118.

5. SRI. LINGANAGOUDA S/O. DODDANAGOUDA KULKARNI,
AGE: 53 YEARS, OCC. RETIRED WORKER,
R/O. TQ. HUBBALLI,
DIST. DHARWAD, PIN- 580020.

SHIDDANAGOUDA S/O. DODDANAGOUDA KULKARNI,
SINCE DECEASED BY HIS LRS.

6. SMT. SULOCHANA W/O. SHIDDANAGOUDA KULKARNI,
AGE: 55 YEARS, OCC. HOUSEHOLD WORK,
R/O. BHUDIHAL, TQ. MUNDARAGI,
DIST. GADAG, PIN- 582118.

7. SAVITRI D/O. SHIDDANAGOUDA KULKARNI,
AGE: 32 YEARS, OCC. HOUSEHOLD WORK,
R/O. BHUDIHAL, TQ. MUNDARAGI,
DIST. GADAG, PIN- 582118.

8. SOUMYA D/O. SHIDDANAGOUDA KULKARNI,
AGE: 30 YEARS, OCC. HOUSEHOLD WORK,
R/O. BHUDIHAL, TQ. MUNDARGI,
DIST. GADAG, PIN- 582118.

SMT. MADHUMATI W/O. MALLIKARJUNA DODDAMANI,
SINCE DECEASED BY HIS LRS.

9. SRI. MALLIKARJUNA S/O. SHIDDALINGAPPA DODDAMANI,
AGE: 62 YEARS, OCC. AGRICULTURE WORK,
C/O. DHRUVA GIFT AND NYAVALITIES,
KUDALAGI CIRCLE,
R/O. TQ. HAGARIBOMMANAHALLI,
DIST. VIJAYA NAGAR, PIN- 583 212.

10. SMT. VIJAYALAKSHAMI W/O. VINODA C.
AGE: 34 YEARS, OCC. HOUSEHOLD WORK,
R/O. DHRUVA GIFT AND NYAVALITIES,
KUDALAGI CIRCLE,
R/O. TQ. HAGARIBOMMANAHALLI,
DIST. VIJAYA NAGAR, PIN- 583 212.



11. SMT. KANCHANA W/O. NAGARAJ B. C.
AGE: 32 YEARS, OCC. HOUSEHOLD WORK,
R/O. DHARUVA GIFT AND NYAVALITES,
KUDALAGI CIRCLE,
R/O. TQ. HAGARIBOMMANAHALLI,
DIST. VIJAYANAGAR, PIN- 583212.
12. SRI. GAVISHA S/O. MALLIKARJUNA DODDAMANI,
AGE: 30 YEARS, OCC. PRIVATE JOB,
R/O. DHARUVA GIFT AND NYAVALITIES,
KUDALAGI CIRCLE,
R/O. TQ. HAGARIBOMMANAHALLI,
DIST. VIJAYA NAGAR, PIN- 583 212.
13. SMT. KHAJABI W/O. MAINUDDIN VADATTI,
AGE: 68 YEARS, OCC. HOUSEHOLD WORK,
R/O. TQ. MUNDARAGI,
DIST. GADAG, PIN- 582118.

...RESPONDENTS

(BY SRI. N.R. KUPPELUR, ADVOCATE FOR C/R4 AND R10 TO R12)

THIS RSA IS FILED UNDER SECTION 100 READ WITH ORDER XLI RULE 1 OF CPC, PRAYING TO ALLOW THIS REGULAR SECOND APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE DATED 13.04.2023 IN RA NO. 70/2021, PASSED BY IN THE COURT THE SENIOR CIVIL JUDGE AND JMFC LAXMESHWAR, SITTING AT MUNDARAGI AND THE JUDGMENT AND DECREE DATED 16.09.2016, IN THE O.S.NO.54/2009, PASSED BY IN THE COURT OF THE CIVIL JUDGE AND JMFC, MUNDARAGI AND AS PRAYED WITH COSTS THROUGHOUT IN THE INTEREST OF JUSTICE EQUITY.

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



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

The appellant is before this Court impugning the judgment passed in R.A.No.70/2011 by learned Senior Civil Judge and JMFC, Laxmeshwar, sitting at Mundaragi dated 13.04.2023, whereby he confirmed the judgment of the Trial Court in O.S No.54/2009.

2. The factual matrix that is relevant for the purpose of this appeal is as below:

a. The plaintiff filed a suit for relief of partition and separate possession in respect of the suit schedule properties. The appellant herein was the defendant No.6 before the Trial Court. After the contest, the suit came to be decreed and the plaintiff and the defendants No.2, 3 and 7 were allotted $1/40^{\text{th}}$ share each and the defendants No.1, 4 to 6 were allotted $9/40^{\text{th}}$ share each in the suit schedule properties. Since none of the parties had filed any appeal, the judgment of the Trial Court had attained finality. Thereafter, the plaintiff filed final



decree proceedings in FDP No.19/2018. When the matter was being heard, some of the respondents sought transposing them as the plaintiffs/petitioners. The Trial Court allowed the same. Then an application was filed seeking modification of the preliminary decree passed by the Trial Court in view of the judgment of the Hon'ble Apex Court in the case of ***Vineeta Sharma v. Rakesh Sharma***¹. The Trial Court after hearing the counsels appearing for the parties, held that there is a need for modification of the shares and accordingly, it modified the shares awarding 1/8th share to the transposed petitioner and the plaintiff. The said order on I.A.No.4, which modified the share, was challenged in R.A.No.70/2021.

b. After hearing, the First Appellate Court framed the following points for consideration:

"POINTS

- 1. Whether the appeal preferred by the appellant/original defendant No.6 by challenging the preliminary decree, without condonation of delay with challenging the*

¹ AIR 2020 SC 3717



*orders passed on IA No.4 in FDP
No.19/2018 is maintainable?*

*2. Whether the appeal preferred by the
appellant/original defendant No.6 by
challenging the orders passed on IA NO.4
in FDP No.19/2018, is maintainable?*

3. What order?"

3. By impugned order, the First Appellate Court answered Point No.1 and 2 in the negative and proceeded to dismiss the appeal.

4. The First Appellate Court noticed that in a suit for partition, though the shares of the parties could be varied up to passing of the final decree, such variation of shares determined under a preliminary decree can be sought by a party only on certain event having taken place, necessitating readjustment of the shares as declared in the preliminary decree. It also noticed that the Trial Court has to modify the shares only in respect of item No.1 to 5 of the suit schedule properties, but the amendment can be introduced to make a request to the Court to take cognizance of the change of



position of law. Therefore, it held that the modification of the preliminary decree prior to the passing of the final decree is permissible if in the interregnum the events and supervening circumstances occur necessitating the change in shares of the parties. It was held by the First Appellate Court that in the affidavit filed in support of I.A.No.4, the respondents have not pointed out any event or supervening circumstance necessitating the change in the shares to determine as per the preliminary decree passed on 16.09.2016. In view of the decision of the Hon'ble Apex Court in the case of ***Vineeta Sharma (referred supra)***, there was a change which was necessitated and therefore, the impugned order passed in final decree proceedings cannot be interfered with.

5. The First Appellate Court also notices that the appellant had sought two prayers in one petition. The first one was a prayer to set aside the orders passed on I.A.No.4 in FDP No.19/2018 and the second one was to set aside the judgment and decree passed in O.S.No.54/2009, which was not maintainable. Since it was a regular appeal, the order



passed on I.A.No.4 will have a different connotations and the appeal on the preliminary decree will have different footings.

6. It is pertinent to note that even if we consider the merits of the case, the appellants are seeking exclusive ownership on some of the properties on the ground that there was Varadi given by the plaintiffs and few other sharers by which the right in some of immovable properties was relinquished. Obviously, there was no such registered relinquishment deed, which was produced before the Trial Court. The Varadi to the Revenue Authorities for mutation cannot be a ground to say that there was relinquishment of rights by some of the sharers of the family.

7. It is submitted by the learned counsel for the appellant that all the daughters of the propositus, who are the sisters of the defendants had given Varadi to the Revenue Authorities relinquishing their share. It is worth to note that the provisions of the amended Hindu Succession Act make it clear that only such partition, which is supported by Registered Partition Deed need to be given effect to.



Therefore, it cannot be said that the Trial Court has erred in awarding shares to the plaintiffs, who are the daughters of the propositus. Under these circumstances, the judgment of the Trial Court in O.S.No.54/2009 having become final and having not been challenged anywhere, could not be questioned by the appellants. The limited point that was available was in respect of shares calculated by the Court in the final decree proceedings in pursuance to the order on I.A.No.4. Obviously, I.A.No.4 was considered in the light of the judgment of the Hon'ble Apex Court in the case of ***Vineeta Sharma (referred supra)***. Therefore, the said order, which was the subject matter of R.A.No.70/2021 having been considered on merits, there is no room to interdict the same.

8. The relationship between the parties having been admitted, the daughters are entitled for equal share in the light of the judgment of the Hon'ble Apex Court in the case of ***Vineeta Sharma (referred supra)***. Nothing is pointed out before this Court to show that the calculation of the shares is not in accordance with the judgment rendered in the case of



Vineeta Sharma (referred supra). In that view of the matter, even on merits, there are no grounds, which are discernible and worth considering. Hence, the appeal is unmerited and same is dismissed at the stage of admission.

9. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of.

**SD/-
(C M JOSHI)
JUDGE**

RKM- para 1 and 2
YAN
CT:PA
List No.: 1 SI No.: 17