



NC: 2026:KHC:22798-DB
RFA No. 882 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2026

PRESENT

HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

REGULAR FIRST APPEAL NO.882 OF 2023 (PAR-)

BETWEEN:

DR. M.A SOMASHEKARA
S/O LATE M K APPAJAPPA,
AGED ABOUT 89 YEARS,
R/AT 245, 2ND MAIN, 7TH BLOCK,
JAYANAGAR,
BENGALURU -560 082,

REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER DR. DHARMENDRA,
S/O M A SOMASHEKARA,
AGED ABOUT 60 YEARS,
R/AT 245, 2ND MAIN, 7TH BLOCK,
JAYANAGAR,
BENGALURU - 560 082.

...APPELLANT

(BY SRI. SANATH KUMAR SHETTY K., ADVOCATE)

AND:

1. MRS. M. N. KUSUMA
D/O LATE VIJAYALAKSHMI,
AGED ABOUT 59 YEARS,
2. MRS. M N SUJATHA
D/O LATE VIJAYALAKSHMI
AGED ABOUT 57 YEARS,
3. MRS. M N NARENDRA KUMAR
S/O LATE VIJAYALAKSHMI,

Digitally
signed by
SOMATHY
KANNAN
Location
HIGH COURT
OF KARNATAKA



AGED ABOUT 56 YEARS,

4. MRS. M N SHASHIKALA
D/O LATE VIJAYALAKSHMI ,
AGED ABOUT 54 YEARS,

5. M N NARASEGOWDA
H/O LATE VIJAYALAKSHMI,
AGED ABOUT 88 YEARS,

RESPONDENT NOS.1 TO 5 ARE
R/AT NO.594, 10TH A MAIN ROAD,
5TH BLOCK, JANANAGAR,
BENGALURU -560 011.

6. M A DEVDAS
S/O LATE M K APPAJAPPA,
SINCE DEAD BY LR_s

6a. MRS. INDIRA DEVADAS
AGED ABOUT 80 YEARS
W/O LATE M A DEVADAS
R/AT NO.202/C, GROUND FLOOR,
6TH B MAIN, JAYANAGAR III BLOCK,
BENGALURU - 560 011.

6a. AMY ARATHI DEVADAS
D/O LATE M A DEVADAS
AGED ABOUT 47 YEARS
R/AT 9440, NAYYALE ROAD,
PARK VILLE, BALTIMORE M D – 21234
U.S.A

7. M A GOVINDARAJ
S/O LATE M K APPAJAPPA,
AGED ABOUT 83 YEARS,
R/AT MARIKAVATHAHALLI POST,
MYSURU TALUK,
MYSURU - 560 005.

8. MRS. NIRMALA NAGARAJ
D/O LATE LEELAVTHI,
AGED ABOUT 68 YEARS,
R/AT NO.522, 33RD CROSS,



IV BLOCK, JAYANAGAR
BENGALURU -560 011.

9. MRS. SHANTHALA
SHESHAGIRI,
D/O LATE LEELAVATHI,
AGED ABOUT 66 YEARS,
R/AT NO.522, 33RD CROSS,
IV BLOCK, JAYANAGAR,
BENGALURU - 560 011.
10. MRS. POORNIMA SHEKAR
D/O LATE LEELAVTHI,
AGED ABOUT 61 YEARS,
R/AT NO.522, 33RD CROSS,
IV BLOCK, JAYANAGAR,
BENGALURU - 560 011.
11. DR. D C MAHESH
S/O LATE LEELAVTHI,
AGED ABOUT 57 YEARS,
R/AT NO.522, 33RD CROSS,
IV BLOCK, JAYANAGAR,
BENGALURU - 560 011.
12. MRS. VIMALA
W/O HANUMANTHAIHAH
AGED ABOUT 76 YEARS,
R/AT NO.322/20, 1ST MAIN,
CAMBRIDGE ROAD, ULSOOR,
BENGALURU - 560 008.
13. M A SRINIVAS
S/O M K APPAJAPPA,
AGED ABOUT 75 YEARS,
R/AT NO.198/A, 25TH CROSS,

III BLOCK, JAYANAGAR,
BENGALURU -560 011.

...RESPONDENTS

(BY SRI. JAI PRAKASH RAO., ADVOCATE FOR R-1 TO R-5;
SRI. ANISH ACHARYA, ADVOCATE FOR R6(a & b) & R8-R11;



SMT. K.M.ROHINI, ADVOCATE FOR R-12;
SRI. R.A.DEVANAND, ADVOCATE FOR R-13;
R-7 IS DELETED VIDE ORDER DATED 17.12.2025)

THIS RFA FILED UNDER SECTION 96 OF CPC PRAYING TO SET ASIDE THE ORDER DATED 28.03.2023 PASSED BY THE XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, IN FDP NO.181/2014 AND ALLOW THIS APPEAL WITH COSTS THROUGHOUT.

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

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal seeks to challenge an order dated 28.03.2023 passed by the XVIII Additional City Civil Judge and Sessions Judge, Bengaluru in F.D.P.No.181/2014 (hereinafter referred to as 'the Impugned Order'). By the Impugned Order, the learned Trial Court has directed division of the property by auction to be conducted in terms of the provisions of Section 2 of the Partition Act, 1893 (hereinafter referred to as 'the Partition Act').



2. This Court had by an order dated 27.06.2023 directed a stay of the Impugned Order and Judgment. The order has continued as is since then.

3. The learned counsel for the appellant submits that the Impugned Order suffers from infirmity, in as much as although the learned Trial Court had directed that a Feasibility Report be filed along with a Valuation report, only a Valuation report was filed by the Commissioner. In addition, the learned counsel contends that no reserve price was fixed as was the requirement of Section 6 of the Partition Act.

4. The learned counsel for the respondents on the other hand, submit that the Commissioner had given a Valuation Report dated 21.02.2019 and the Valuation Report was examined and the learned Trial Court found that the division is not feasible by metes and bounds. Thus, based on the Valuation Report, directions were passed in the Impugned Order. He further states that the suit property is not divisible by metes and bounds as there are six



shares and some of these shareholders have dependents and in some cases the share has been stated to be further divisible. It is further contended that there are two (2) immovable properties in Bangalore namely the Schedule 2 and 4 properties which are not feasible for a division by metes and bounds. They seek to rely on the findings given in the Impugned Order in this behalf.

5. At this stage, it is relevant to extract the relevant provisions of the Partition Act, which are set out thus:

"2. Power to Court to order sale instead of division in partition suits. — Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

3. Procedure when sharer undertakes to buy.—(1) If, in any case in which the court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at



the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

4. Partition suit by transferee of share in dwelling-house. — (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

XXX

XXX

XXX

6. Reserved bidding and bidding by shareholders.—
(1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the court may seem reasonable.



(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder."

[Emphasis Supplied]

5.1 Section 2 of the Partition Act provides for a sale by metes and bounds if a division of such property cannot reasonably or conveniently be made. Section 3 and subsection (2) of Section 4 provides for the procedure to be followed for such sale. Section 6 provides that for every sale directed, a reserve price must be fixed by the Court for such action.

6. On an examination of the report given by the Commissioner dated 21.02.2019 before the learned Trial Court, there is a detailed valuation conducted *qua* the suit schedule 2 and 4 properties on further value of the properties. The report however does not give any finding of feasibility whatsoever. The Impugned Order after recording such finding proceeds to direct a sale.

7. The Impugned Order passed by the learned Trial Court however reflects that the Court had earlier on



11.01.2019, appointed a Commissioner to prepare a Feasibility Report. However, the Commissioner has only given a valuation report. Accordingly, a sale was directed by the learned Trial Court in the following manner:

*"In view of the submission of respective parties as well as considering the area of the property situated at Bangalore, it is found that is not possible to divide and allot the shares to the respective share holders as per the decree. **In this case the court commissioner has been appointed on the basis of application filed U/s 2 of Partition Act for submitting a feasible report but he has submitted only valuation of the property that itself shows that the properties are not feasible for division. Hence it is a fit case to sale the properties in public auction** and divide the sale proceeds among the parties as per the decree with liberty to the parties to participate in the auction of properties. Hence the following;*

ORDER

The Item no. 2 and 3 is hereby ordered to be sold in public auction and the sale proceeds to be divided between the parties as per the decree.

Hence issue sale proclamation to sell the item no. 2 and 3 properties that are situated at Jayanagara 1st block and 7th Block to hold the auction of property in the spot on 21.06.2023 and court sale on 28.06.2023.

The respective parties to the petition are at liberty to participate in the auction of properties.

The petitioners are directed to pay the necessary bata and other charges.

Meantime office is directed to issue commission warrant to obtain the feasible report in respect of item no. 1 property situated at Mysore...."

[Emphasis Supplied]



8. Clearly thus, the provisions of Sections 2 to 6 of the Partition Act have not been complied with. In addition and given the pendency of the matter and the fact that there is no report showing that the partition is not feasible on record, this Court deems it apposite to remand the matter to the Trial Court.

9. Accordingly, this Court deems it expedient to pass the following directions:

(i) The parties will appear before the learned Trial Court on 10.06.2026.

(ii) The learned Trial Court will appoint a Commissioner to decide both the feasibility and the up-to-date valuation of the suit schedule properties.

(iii) The learned Trial Court will also ensure that the procedure as set on Sections 3 and 4 is followed and the reserve price in terms of Section 6 of the Partition Act is fixed, if requisite.



(iv) Learned counsel for the parties undertake that the parties will co-operate with the Commissioner to expedite the report to be given.

(v) The entire process will be concluded within six weeks from the date of appearance of the parties before the Trial Court.

(vi) Once the report is filed by the Commissioner, the learned Trial Court is at liberty to proceed with the matter, in accordance with law.

10. The appeal is disposed of in the foregoing terms.

All pending applications stand closed.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

KS
List No.: 1 Sl No.: 2