



CNR: KAHC010226832019

NC: 2026:KHC:52912
WP No. 32089 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 32089 OF 2019 (GM-CPC)

BETWEEN:

SRI L KESHAVACHANDRA
S/O LATE M.P.LAKSHMINARAYANA,
#12/1, 12TH CROSS,
CUBBONPET, BANGALORE-560 002.

...PETITIONER

(BY SRI. M RAMACHANDRA REDDY.,ADVOCATE)

AND:

1. SMT L YOGITHA @ GEETHA
W/O SRIDHARA MURTHY,
R/AT #10/1, 10TH CROSS,
5TH MAIN ROAD, RAGHAVENDRA MEDICAL CENTRE,
AGRAHARA DASARAHALLI,
BANGALORE-560 079.
2. SRI DEVARAJU
S/O LATE M.P.LAKSHMINARAYANA,
#13, I FLOOR, BLOCK NO.6,
BDA APARTMENT, NANDI GARDEN
ANJANAPURA POST,
NEAR BANNERGHATTA PARK,
BANGALORE-560 006.
3. SMT.L.CHANDRALEELA
W/O SHIVASHANKARAIHAH,
#432, VEERABHADRAPETE,
CHOWDESHWARI TEMPLE STREET



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WP No. 32089 of 2019

CNR: KAHC010226832019

BANGALORE RURAL DISTRICT.

4. SMT.KAMALA
W/O MAHESH,
R/O # 610, TANK ROAD,
VEERABHADRAPPET,
DODDABALLAPURA TALUK,
BANGALORE RURAL DISTRICT.

...RESPONDENTS

(BY SRI. .,ADVOCATE)

THIS WP FILED PRAYING TO-CALL FOR THE RECORDS;QUASH THE ORDERS PASSED ON 27.11.2018 ON THE I.A. FILED UNDER ORDER XX RULE 18 R/W SECTION 151 OF CPC AND UNDER ORDER XX RULE 18 SECTION 152 R/W SECTION 151 OF CPC IN FDP NO.85 OF 2009 (O.S.NO.7681/2003) BY THE LXVI ADDL. CITY CIVIL JUDGE, BANGALORE CCH-67 (ANNEXURE-K).GRANT AN INTERIM ORDER OF STAY STAYING ALL FURTHER PROCEEDINGS IN FDP NO.85 OF 2009 (O.S.NO.7681/2003) IN PURSUANT TO ORDERS PASSED ON 27.11.2018 (ANNEXURE-K) BY THE LXVI ADDL. CITY CIVIL JUDGE, BANGALORE CCH-67 AND ORDER DATED 10.07.2019 FIXING THE DATE OF AUCTION ON 13.8.2019 AT THE SPOT AN 17.8.2019 (ANNEXURE-P) AT COURT.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CNR: KAHC010226832019

NC: 2026:KHC:52912
WP No. 32089 of 2019

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The petitioner, who is arrayed as respondent No.2 in FDP No.85/2009, is before this Court calling in question the order passed by the Final Decree Proceedings Court (hereinafter referred to as the "FDP Court") on the application filed by him seeking modification of the preliminary decree. The said application was premised on the ground that, subsequent to the demise of the propositus, Lakshminarasappa, his widow, Gowramma, had bequeathed her undivided share in the suit properties in favour of the petitioner under a registered Will dated 05.12.2015. The petitioner, therefore, sought re-determination of the shares by modifying the preliminary decree in terms of the testamentary disposition made by his mother. The said application, however, came to be rejected by the learned Judge.

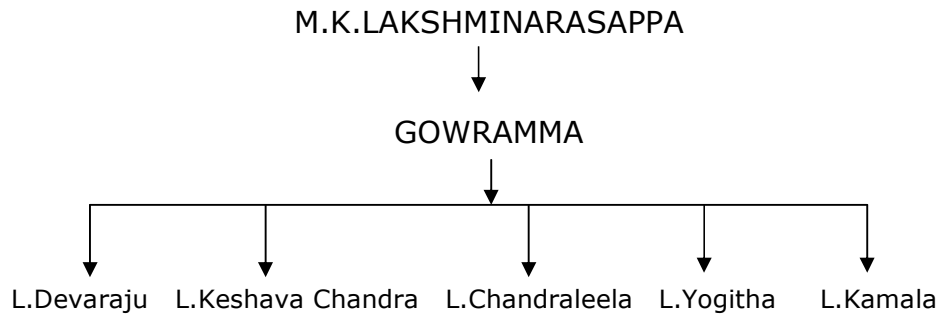
2. The petitioner had also filed a second application seeking rectification of the measurements of the properties, which application too has been rejected by the Court below.



Aggrieved by the rejection of both the applications, the petitioner has approached this Court.

3. Heard the learned counsel appearing for the petitioner. There is no representation on behalf of the respondents. Though respondent No.2-Yogitha had opposed the applications before the FDP Court, she has been duly served in the present proceedings and has chosen not to contest the matter.

4. Before proceeding to examine the controversy, it would be appropriate to set out the genealogy of the family, which is as under:



5. One Lakshminarasappa, who was arrayed as respondent No.3 in FDP No.85/2009, was the father of the parties and was married to Gowramma. The present petitioner,



respondent No.1-Yogitha, respondent No.3-Chandraleela and respondent No.4-Kamala are the children of Lakshminarasappa and Gowramma. It is also not in dispute that respondent No.1-Yogitha has since died and her legal representatives have been brought on record.

6. The present petitioner instituted O.S.No.7681/2003 seeking partition and separate possession of his share in the suit schedule properties. The said suit came to be decreed, whereby 1/4th share each was declared in favour of Lakshminarasappa, Devaraj, Keshav and Yogitha.

7. During the course of the final decree proceedings, the present petitioner filed an application under Order XX Rule 18 read with Section 151 of the Code of Civil Procedure, seeking re-determination of the shares. The principal ground urged in the application is that, subsequent to the demise of Lakshminarasappa, his widow-Gowramma and daughters-Chandraleela and Kamala, who were not parties to the original suit, have been brought on record in the final decree proceedings. The petitioner further asserts that Gowramma had executed a registered Will dated 05.12.2015 and, on the



CNR: KAHC010226832019

strength of the said testamentary disposition, claims entitlement to the share which would ultimately fall to Gowramma. It is, therefore, contended that the share of Gowramma requires to be first quantified and that the same has thereafter to be subjected to adjudication on the validity and due execution of the Will.

8. The FDP Court, however, rejected the application principally on the ground that, once a preliminary decree has been drawn, the same cannot be modified unless it is challenged by an aggrieved party. The aforesaid approach, in the considered opinion of this Court, proceeds on an erroneous understanding of the nature and scope of final decree proceedings. Final decree proceedings are a continuation of the suit, and the Court is required to take into consideration subsequent events which have a direct bearing upon the determination and allotment of the shares of the parties. The mere fact that a preliminary decree has earlier been drawn cannot, by itself, denude the FDP Court of jurisdiction to re-determine the shares when subsequent events or the rights asserted by the parties warrant such determination.



9. This Court, in ***Ganesh v. Gangawwa***, in W.P.No.106399/2026 disposed of on 31.08.2026, has considered the manner in which an FDP Court is required to proceed when, during the pendency of final decree proceedings, a party dies and a testamentary disposition is set up in respect of the share of the deceased. The principles enunciated therein are squarely attracted to the facts of the present case. Lakshminarasappa has admittedly died and his widow-Gowramma has been brought on record. The present petitioner now sets up a registered Will dated 05.12.2015 said to have been executed by Gowramma. Once such testamentary disposition is set up in final decree proceedings, the FDP Court is required to adjudicate upon the Will in accordance with law, since the validity and due execution of the Will would have a direct bearing upon the ultimate allotment of the share which falls to Gowramma.

10. The matter assumes further significance for the reason that O.S.No.7681/2003 was instituted without impleading Chandraleela and Kamala. Upon the demise of Lakshminarasappa, they have been brought on record in the



final decree proceedings as his legal heirs. Their entitlement, therefore, cannot be ignored while working out the shares in the estate. The subsequent impleadment of the daughters necessarily requires the FDP Court to examine their entitlement in the light of the law governing coparcenary rights as declared by the Hon'ble Supreme Court in ***Vineeta Sharma v. Rakesh Sharma***, reported in **(2020) 9 SCC 1**.

11. The Constitution Bench of the Hon'ble Supreme Court in ***Vineeta Sharma*** has authoritatively declared that a daughter is a coparcener by birth and that her coparcenary right is not dependent upon the father being alive on 09.09.2005. Consequently, where the rights of daughters are required to be worked out in pending partition and final decree proceedings, the Court cannot proceed on the basis of an earlier computation which does not recognise the statutory rights conferred upon daughters under the substituted Section 6 of the Hindu Succession Act, 1956.

12. It is, therefore, incumbent upon the FDP Court, while working out the final shares, to first determine the entitlement of Chandraleela and Kamala in accordance with the law



declared in ***Vineeta Sharma***. If the earlier preliminary decree has resulted in their shares not being properly reflected or quantified, the FDP Court cannot mechanically proceed to draw the final decree on the basis of the earlier determination. The fact that the preliminary decree has attained finality does not preclude the Court from taking into consideration subsequent developments and determining the shares in accordance with the law applicable to the parties when the final decree is being worked out.

13. Equally, the claim of the present petitioner based upon the alleged testamentary disposition by Gowramma requires adjudication. The petitioner cannot be straightaway allotted Gowramma's share merely on the basis of the production or assertion of the registered Will. At the same time, the FDP Court could not have rejected the application without considering the effect of the Will. The proper course would have been to first ascertain and quantify the share, if any, falling to Gowramma and thereafter call upon the propounder of the Will to establish its due execution and validity in accordance with law.



14. In the circumstances, the rejection of the application filed by the petitioner under Order XX Rule 18 read with Section 151 of the CPC, on the sole premise that the preliminary decree cannot be modified, is legally unsustainable. The FDP Court was required to examine whether, in the light of the subsequent events and the rights asserted by the parties, re-determination of the shares was necessary for effectively working out the preliminary decree and drawing the final decree.

15. The FDP Court is accordingly required to undertake the exercise in the following sequence. Firstly, the shares of all the coparceners and heirs, including Chandraleela and Kamala, shall be re-determined in accordance with the law declared by the Hon'ble Supreme Court in Vineeta Sharma. Secondly, the share falling to Lakshminarasappa shall be determined in accordance with the applicable law. Upon his demise, the succession to his share shall thereafter be worked out among his widow-Gowramma and his children, in accordance with law. Thirdly, the share falling to Gowramma shall be specifically quantified. Fourthly, the petitioner shall be called upon to establish the registered Will dated 05.12.2015 in accordance



with law. The question as to whether the Will was duly executed and is otherwise legally enforceable shall be adjudicated by the FDP Court after affording due opportunity to the parties concerned.

16. If the petitioner succeeds in establishing the Will in accordance with law, the share quantified as falling to Gowramma shall be dealt with in terms of the testamentary disposition, subject to the rights of the parties in accordance with law. If the Will is not proved, the share falling to Gowramma shall devolve in accordance with the applicable law of succession and the shares shall be re-adjusted and re-allotted accordingly.

17. There is yet another aspect of the matter. The petitioner has also raised a grievance with regard to the measurements of certain properties as reflected in the preliminary decree. Such an objection cannot be rejected merely on the ground that a preliminary decree has already been drawn. In final decree proceedings under Order XX Rule 18 of the CPC, the Court is required to effectively work out the rights declared under the preliminary decree and to ensure that



the properties are properly identified and measured for the purpose of actual division by metes and bounds. If the measurements can be rectified on the basis of the documentary material already available on record, the FDP Court may undertake such exercise on that basis. If the dispute with regard to measurement or identification cannot be satisfactorily resolved on the existing material, the Court may obtain a report from the Court Commissioner and thereafter proceed in accordance with law.

18. The order impugned herein is wholly cryptic and does not examine any of the aforesaid aspects. The FDP Court has proceeded on a general proposition that a preliminary decree cannot be modified after it has been drawn, without considering the subsequent death of Lakshminarasappa, the impleadment of Gowramma, Chandraleela and Kamala, the statutory rights claimed by the daughters, and the testamentary disposition relied upon by the present petitioner. The order, therefore, suffers from a fundamental error in the exercise of jurisdiction and cannot be sustained.



19. For the foregoing reasons, the writ petition deserves to be allowed. The matter requires to be remitted to the FDP Court for fresh consideration of the application filed by the petitioner and for re-determination of the shares in accordance with law, keeping in view the subsequent events and the principles enunciated hereinabove.

ORDER

- i. The writ petition is allowed.
- ii. The order dated 27.11.2018 passed in FDP No.85/2009 by the LXVI Additional City Civil and Sessions Judge, Bengaluru (CCH-67), produced at Annexure-K, is hereby quashed and set aside.
- iii. The FDP Court shall re-determine the shares of the parties, including the shares of Chandraleela and Kamala, in accordance with the law declared by the Hon'ble Supreme Court in Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.
- iv. While re-determining the shares, the FDP Court shall determine the share, falling to Lakshminarasappa and thereafter work out the devolution of his share upon his death among Gowramma and his children in accordance with law.



CNR: KAHC010226832019

**NC: 2026:KHC:52912
WP No. 32089 of 2019**

v. The share falling to Gowramma shall be separately quantified, and the present petitioner, being the propounder of the registered Will dated 05.12.2015, shall be called upon to establish the due execution and validity of the said Will in accordance with law.

vi. In the event the petitioner succeeds in proving the Will in accordance with law, the share falling to Gowramma shall be dealt with in terms of the testamentary disposition, subject to the rights of the parties in accordance with law. In the event the Will is not proved, the share falling to Gowramma shall devolve in accordance with the applicable law of succession and the shares shall be re-adjusted and re-allotted accordingly.

vii. The FDP Court shall also consider the grievance of the petitioner with regard to the measurements and identification of the suit properties. If the same cannot be satisfactorily resolved on the basis of the material already available on record, the FDP Court shall appoint a Court Commissioner to conduct a thorough enquiry, ascertain the correct measurements and physical particulars of the properties, and submit a feasibility report indicating the manner in which the properties can conveniently and equitably be divided by metes and bounds. Upon



**NC: 2026:KHC:52912
WP No. 32089 of 2019**

CNR: KAHC010226832019

receipt of such report, the FDP Court shall proceed further in accordance with law.

viii. The aforesaid exercise shall be undertaken after affording reasonable opportunity to all the parties concerned and uninfluenced by any observations made in the order impugned herein.

ix. It is made clear that this Court has not expressed any opinion on the validity or due execution of the Will dated 05.12.2015, and all such questions are left open for adjudication by the FDP Court in accordance with law.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**