



CNR: KAHC010518942022

NC: 2026:KHC:49879
WP No. 22348 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR

MAGADUM

WRIT PETITION NO. 22348 OF 2022 (GM-CPC)

BETWEEN:

1. A NATARAJ
AGED 81 YEARS
S/O LATE M APPAJAPPA
2. SMT SNEHA
AGED ABOUT 32 YEARS
D/O SRI A NATARAJ

BOTH ARE R/AT NO.127
NEW NO.116, 7TH MAIN ROAD
4TH BLOCK JAYANAGAR
BANGALORE -560 011.

...PETITIONERS



(BY SRI. GOUTHAM BHARADWAJ, ADVOCATE FOR
SRI. ANKITH JAIN, ADVOCATE)

AND:

1. A. VISHWANATH
AGE 70 YEARS
S/O LATE M. APPAJAPPA
R/AT NO.201, ORCHID BLOCK
PAVANI RESIDENCY APARTMENT
PUTTENAHALLI, YELAHANKA
BANGALORE-560 016.
2. MAHESH N

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AGED ABOUT 45 YEARS
S/O SRI A NATARAJ
R/AT NO.659, 8TH MAIN
3RD BLOCK, 3RD STAGE
BASAVESHWARANAGAR
BANGALORE -560 079.

3. DR A KALPANA UDAYASHANKAR
AGED ABOUT 65 YEARS
W/O UDAYASHANKAR
R/AT NO.17, BECKETT-CLOSE
IRVINGTON NY 10523 USA
4. DR A NIRMALA RAJESHWARAN
AGED 78 YEARS
W/O RAJESHWARAN
R/AT SHOREWOOD POINT
DANVILLE, ILLINOIS, I L 5/832
USA.
5. SMT NANDINI ANAND
AGED 48 YEARS
W/O S N P DEVARJU @ M V ANAND
R/AT NO.81, FLAT NO.3D
SUSHOBIT RESIDENCY
OPP AMBEDKAR STADIUM
BASAVAESHWARANAGAR
BANGALORE-560 079.

...RESPONDENTS

(BY SRI. BALARAM .M.L, ADVOCATE FOR C/R1;
SRI. B.R. KRISHNA, ADVOCATE FOR R3;
V/O DATED 02.12.2022, NOTICE TO R2, R4 AND R5 IS
DISPENSED WITH)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE
ORDER DATED 14-10-2022 PASSED ON I.A.NO. 2/2022 IN
FDP NO. 25002/2011 PENDING ON THE FILE OF THE
COURT OF THE LXXIV ADDL. CITY CIVIL AND SESSIONS

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JUDGE, C/C LVII ADDL. CITY CIVIL AND SESSIONS JUDGE BANGALORE (CCH-58) AS PER ANNEXURE -K TO THE WP AND THE ORDER DATED 29-10-2022 PASSED ON I.A.NO.1/2022 IN FDP NO. 25002/2011 PENDING ON THE FILE OF THE COURT OF THE LXXIV ADDL. CITY CIVIL AND SESSIONS JUDGE, C/C LVII ADDL. CITY CIVIL AND SESSIONS JUDGE BANGALORE (CCH-58) AS PER ANNEXURE-N TO THE WP; AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned petition is filed by the original defendant No.1 in O.S.No.15655/2000, calling in question the order passed on I.A.No.1/2022, whereby the learned Trial Court has appointed a Court Commissioner to submit a feasibility report, as also the order dated 14.10.2022 passed on I.A.No.2/2022, filed seeking modification of the preliminary decree so as to allot 1/5th share of defendant No.2 – Dr. A. Vasanth Kumar, in view of the registered gift deed executed by defendant No.2 – Dr. A. Vasanth Kumar in favour of defendant No.4 – A. Vishwanath.

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2. The challenge to the aforesaid orders is essentially founded on the premise that, in view of the judgment rendered by this Court in RFA No.436/2011, whereby the suit of the plaintiff came to be dismissed in its entirety, the final decree proceedings have become infructuous. It is on this premise that the petitioner seeks quashing of the further proceedings, contending that the final decree proceedings cannot survive in view of the judgment rendered by this Court in the aforesaid regular first appeal.

3. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents. Perused the records and the orders under challenge.

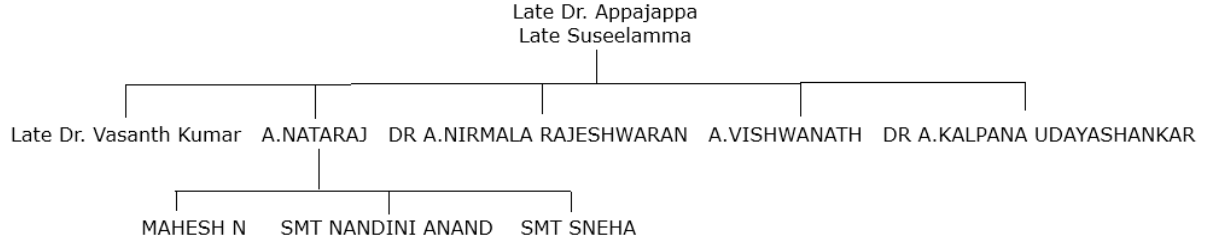
4. Before proceeding to examine the rival contentions, it would be apposite to place on record the family tree, which is as under:

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The son of defendant No.1/Nataraj, namely, Mahesh N., defendants not only entered appearance and filed their written statement, but also paid the requisite Court fee and sought allotment of their respective shares in the suit properties.

5. The learned Trial Court, upon consideration of the pleadings and evidence, decreed the suit insofar as Item No.1 of the suit schedule property was concerned and held that the plaintiff was entitled to a share therein, while rejecting the plaintiff's claim insofar as Item No.2 was concerned. Consequently, the plaintiff's claim in respect of Item No.2 came to be dismissed.

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6. Aggrieved by the decree insofar as Item No.1 was concerned, defendant No.1/Nataraj, along with his daughter, preferred RFA No.436/2011 before this Court, questioning the allotment of share in favour of his son/plaintiff. The said appeal came to be allowed by this Court and, consequently, the suit insofar as the claim of the plaintiff in respect of Item No.1 also came to be dismissed.

7. Since the suit came to be dismissed, defendant No.2 – Dr. A. Vasanth Kumar and defendant No.4 – A. Vishwanath preferred a review petition before this Court. The review petition was allowed and this Court, while clarifying that the suit of the plaintiff stood dismissed in its entirety, categorically held that the other Class-I heirs would nevertheless be entitled to their respective shares in accordance with law.

8. In this regard, it would be apposite to extract the operative portion of the order passed in



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the review petition, which is produced at Annexure-D.

The same reads as under:

"It is made clear that the suit of the plaintiff having been dismissed, the Class-I heirs however would be entitled to their respective shares, in accordance with law. The Review Petition is admitted and allowed."

The aforesaid clarification assumes considerable significance. The dismissal of the plaintiff's suit cannot, by itself, be construed as extinguishing or nullifying the independent rights of the other Class-I heirs, particularly when such rights had already been adjudicated and quantified by the competent Civil Court in the very same partition proceedings.

9. To further dispel the confusion sought to be created by the present petitioner No.1/Nataraj, it would be necessary to advert to the decree drawn by the learned Trial Court while quantifying the respective shares. Before referring to the decree, it would be appropriate to extract the findings recorded by the



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learned Trial Court in paragraph No.10 while answering Issue No.3. The entire paragraph is extracted hereunder:

"10. Issue No.3: It was submitted by the defendant No.1 and 7 that defendant No.2 is a permanent resident of England, he married a British woman, the name of children of second defendant are Paul, David and Ruth, defendant No.2 converted himself as a Christian, embraced Christianity, no more he remained as a Hindu with the joint family of plaintiff and defendants, therefore he is not entitled for any share. Defendant No.6 was also married to a Christian, settled at USA by acquiring the citizenship of USA, her daughters also carry Christian names, she has also converted to Christianity, therefore she is not entitled for any share. In order to show that defendant No.2 and 6 converted to Christianity, embraced Christian religion, they are no more Hindus who are not entitled for any share in the joint family property, the defendant No.1 and 7 did not produced any material evidence. Merely because the defendant No.2 and 6 married a Christian spouse and named their children like Paul, David and etc. which are Christian names does not prove that they embraced or converted as Christians. In the absence of material documents produced in respect of conversion into Christianity by defendant No.2 and 6, the contention of defendant

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No.1 that they converted to Christianity, therefore they are not entitled for any share in the suit property is not proved by them. It was contended by defendant No.1 that 5th defendant was placed exparte, she expressed orally that she is not interested in the suit property as she is a resident of USA residing there since more than 20 years, in order to prove the same no material evidence is produced. In order to show that defendant No.1 is entitled for 3/4th share in the suit property item No.1, absolutely no material evidence is produced by the defendant No.1, thereby he failed to prove the same. It is an admitted fact that defendant No.1 after the death of Dr.Appajappa (father of defendants 1 to 6) who succeeded to the suit property item No.1 along with plaintiff, defendant No.7 to 9. During the pendency of the suit, defendant No.8 ie. the mother of defendant No.1 to 6 is no more, the defendant No.3 who has gone in adoption to the family of H.K.Mallappa is not entitled for any share in the suit item No.1 property. The defendant No.1 being the father of the plaintiff, defendant No.7 and 9 together are entitled for one share, defendant No.2, 4 to 6 are entitled for equal share with the defendant No. 1. Therefore the defendant No.1, 2, 4 to 6 are entitled for 1/5th share each in the suit item No.1 property. Out of the said 1/5th share of defendant No.1, plaintiff, defendant No.1, 7 and 9 together entitled for equal share, thereby the plaintiff is entitled to 1/20th share in the suit item No.1 property. The claim of the plaintiff in

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respect of item No.2 property is liable to be dismissed.
Therefore Issue No.3 is answered accordingly."

(emphasis supplied)

10. It would now be appropriate to extract the decree drawn in O.S.No.15655/2000, which reads as under:

"The suit of the plaintiff is decreed in part. Plaintiff is entitled for partition and separate possession of his 1/20th share in the suit item No.1 property. The claim of the plaintiff for partition and separate possession of suit Item No.2 property stands dismissed."

In a suit for partition, it is trite that the subject matter of adjudication is not confined merely to the share claimed by the plaintiff. A partition suit comprehends the determination of the respective rights and shares of all persons who are before the Court and claim an interest in the joint family property. In that sense, the defendants who assert an independent share in the joint family property stand in the position of plaintiffs insofar as their respective claims are concerned.

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11. The underlying principle is that a member of a Joint Hindu Family has a pre-existing right in the joint family property. The decree in a partition suit does not create such right for the first time; rather, the Civil Court adjudicates and declares the pre-existing rights of the parties and thereafter proceeds towards actual division by metes and bounds. Thus, a preliminary decree is, in substance, a formal declaration and quantification of the pre-existing rights of the parties.

12. In the present case, the learned Trial Court, before drawing the decree, has categorically recorded a finding that defendant No.2 – Dr. A. Vasanth Kumar and defendant No.4 – A. Vishwanath were each entitled to 1/5th share in Item No.1 of the suit schedule property. The findings extracted supra demonstrate that the learned Trial Court did not merely quantify the share of the plaintiff; it also

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specifically adjudicated and quantified the shares of the contesting defendants who had asserted their respective rights and had paid the requisite Court fee in the written statement.

13. The amended decree, which is of considerable significance to the controversy before this Court, reads as under:

"The suit of the plaintiff is decreed. The defendants 2 and 4 are entitled for 1/5th share each in the suit properties of Item No.1 only"

The aforesaid amended decree clearly records and declares the entitlement of defendant Nos.2 and 4 to 1/5th share each in Item No.1. Such declaration cannot be wished away merely because the plaintiff's suit was subsequently dismissed in the appeal preferred by defendant No.1.

14. It is, however, noticed with some concern that in the typed copy of the decree furnished by the

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petitioner, the aforesaid crucial portion of the amended decree has been consciously omitted and has not been indicated. The omission of a material portion of the decree, which directly bears upon the entitlement of defendant Nos.2 and 4 and is central to the controversy before this Court, cannot be treated as an innocent or inconsequential omission. Such suppression of a material part of the record amounts to an abuse of the process of Court and warrants serious disapproval.

15. In the backdrop of these undisputed and crucial facts, this Court is now required to examine the challenge raised by the petitioner in the present proceedings.

16. Once a preliminary decree is drawn in a partition suit, it is not necessary that only the plaintiff can initiate or prosecute the final decree proceedings. There may be cases where, notwithstanding the



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preliminary decree, the plaintiff chooses not to initiate final decree proceedings for various reasons. In such circumstances, a defendant whose share has been declared under the preliminary decree cannot be deprived of the right to seek its enforcement merely because the plaintiff does not proceed further.

17. In the present case, although the suit instituted by the plaintiff came to be dismissed in its entirety in RFA No.436/2011, this Court, while allowing the review petition, expressly clarified that the other Class-I heirs would be entitled to pursue their remedies in accordance with law. More importantly, the amended decree passed by the learned Trial Court expressly declares that defendant Nos.2 and 4 are entitled to 1/5th share each in Item No.1 of the suit schedule property.

18. It is precisely on the strength of this adjudication and declaration that defendant No.4 has



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initiated the final decree proceedings seeking partition and separate possession by metes and bounds in respect of Item No.1. The declaration contained in the preliminary decree has attained finality and continues to hold the field.

19. The learned counsel appearing for the petitioner sought to place reliance upon the order passed by this Court in W.P.No.33053/2017, wherein the writ petition filed by defendant Nos.2 and 4 questioning the amendment order came to be rejected on the premise that there was no decree in their favour. However, a careful examination of the record now placed before this Court reveals that the said order proceeded on an erroneous factual premise, occasioned by non-disclosure of the amended decree.

20. The order in W.P.No.33053/2017, therefore, cannot be construed as nullifying or obliterating the preliminary decree drawn by the



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competent Civil Court in O.S.No.15655/2000. The writ proceedings could not, in any event, have the effect of setting aside a subsisting decree of a competent Civil Court in the absence of an adjudication specifically setting aside such decree.

21. As long as the preliminary decree drawn by the competent Civil Court in the partition suit remains intact, the beneficiaries under such decree are entitled to maintain and prosecute final decree proceedings for working out and effectuating the rights declared therein.

22. It is equally well settled that during the pendency of a partition suit or final decree proceedings, if a party, in accordance with law, relinquishes or transfers his or her share in favour of another, particularly under a registered instrument, such transaction would have to be given effect to while working out the shares declared under the preliminary



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decree. Consequently, the 1/5th share or such legitimate share as has been quantified and declared by the Court cannot be rendered ineffective merely because the person in whose favour such share was declared has subsequently dealt with that share in accordance with law.

23. Viewed in this backdrop, the contention of the petitioner that the final decree proceedings have become infructuous on account of the judgment rendered in RFA No.436/2011 is wholly misplaced and misconceived.

24. This Court is also unable to discern any prejudice whatsoever being caused to petitioner No.1/Nataraj by his brothers initiating and prosecuting the final decree proceedings. The share declared in favour of petitioner No.1, namely, 1/5th share, remains wholly intact. Defendant Nos.2 and 4 are not asserting

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any right over the 1/5th share declared in favour of petitioner No.1.

25. The relationship between the parties is not in dispute. The petitioner has also not seriously disputed the legitimate entitlement of his brothers to their respective shares in the suit property. In such circumstances, it is difficult to comprehend the basis on which petitioner No.1 seeks to obstruct the final decree proceedings.

26. This Court, during the course of hearing, had specifically brought to the notice of learned counsel for the petitioner that the present proceedings appear to constitute an abuse of the process of law, particularly in view of the suppression of the material portion of the amended decree. The Court had also indicated that, in the event the petition was found to be an attempt to obstruct the final decree proceedings

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without any demonstrable prejudice to the petitioner, exemplary costs would have to follow.

27. It is also significant that the final decree proceedings have remained stayed pursuant to the interim order dated 14.11.2022. We are now in the year 2026. The preliminary decree was drawn as far back as in the year 2010. Thus, nearly sixteen years have elapsed, yet defendant No.4 has been prevented from enjoying the fruits of the decree in his favour.

28. The first petitioner, who has no direct adversarial contest with his brothers regarding their declared shares, has nevertheless chosen to obstruct the final decree proceedings. The materials placed before this Court, particularly the suppression of the material portion of the amended decree, lead this Court to conclude that the present proceedings have been instituted and pursued in a manner which amounts to misuse and abuse of the process of law.



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29. The extraordinary jurisdiction of this Court cannot be permitted to become an instrument for indefinitely delaying the implementation of a subsisting preliminary decree, particularly when the petitioner himself suffers no deprivation of his declared share and the persons seeking final decree proceedings are merely attempting to work out the rights already adjudicated in their favour.

30. The pendency of the present proceedings for all these years has only resulted in further prolongation of the partition proceedings and has deprived defendant No.4 of the fruits of the decree to which he has been held entitled. In the circumstances narrated supra, this Court finds no justification whatsoever to interfere with the impugned orders or to terminate the final decree proceedings.

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The writ petition is, therefore, wholly devoid of merit and is liable to be dismissed with exemplary costs.

31. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***dismissed***.

(ii) The first petitioner shall pay costs of Rs.2,00,000/- (Rupees Two Lakhs only) to defendant No.4 within a period of six (6) weeks from the date of receipt of a certified copy of this order.

(iii) The learned Trial Court shall proceed with the final decree proceedings in accordance with law and endeavour to bring the same to its logical conclusion, uninfluenced by the observations made herein except insofar as they



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relate to the subsisting preliminary decree and
the rights declared therein.

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(SACHIN SHANKAR MAGADUM)
JUDGE

ALB,
List No.: 2 Sl No.: 11