



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR FIRST APPEAL NO. 1960 OF 2025 (PAR/POS)

BETWEEN:

SRI K S PARTHESHWARA,
S/O LATE SRIKANTA BHATTA
AGED ABOUT 70 YEARS
R/O NEAR PARVATHI POWER PRINTERS
R/AT BHARATHI BEEDI
SRINGERI 577139
CHIKMAGALURU DISTRICT

...APPELLANT

(BY SRI. JAGADEESH D. C., ADVOCATE)

AND:

1. SRI K S TRIYAMBAKA
S/O LATE SRIKANTA BHATTA
AGED ABOUT 65 YEARS
R/T B1/13
JSW STEEL LIMITED
VIDYANAGAR 583275
THORANAGAL VILALGE
SANDUR TALUK
BELLARY DIST.
2. SMT. KAMALAMBHA @ KAMALARAKRISHNA
W/O C RAMAKRISHNA

Digitally
signed by
PAVITHRA N
Location:
High Court
of Karnataka



S/O LATE SRIKANTA BHATTA
AGED ABOUT 73 YEARS
SRINGERI NILAYA
VIDYARANYAPURAM
SUYUZ FARM ROAD
MYSORE 577008

3. SMT. GOWRI @ ASHA
W/O LATE MURULIDHAR
AGED ABOUT 62 YEARS
R/O B1/13 JSW STEEL LIMITED
VIDYANAGAR 583275
THORANAGAL VILLAGE
SANDOOR TALUK
BELLARY DIST.

...RESPONDENTS

(BY SRI. B C VENKATESH, ADVOCATE FOR R1)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE ORDER DATED 2.07.2025 PASSED IN FDP NO.15/2018 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, N.R. PURA, ITINERATE AT SRINGERI., ALLOWING THE PETITION FILED UNDER SEC.54 OF CPC., TO DRAWING THE FINAL DECREE IN TERMS OF PRELIMINARY DECREE PASSED IN OS NO.90/2013.

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

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

The appellant has filed this appeal challenging the Final Decree Proceedings in F.D.P No.15/2018 passed by the Senior Civil Judge and J.M.F.C. N.R.Pura, Itinerate at Sringeri ('FDP Court') on 02.07.2025, which was arising out of O.S. 90/2013. The Trial court granted 1/4th share each in favor of the plaintiff, defendant Nos.1, 3 and 4, respectively. Accordingly, the FDP Court allotted shares equally in favour of the appellant and respondents.

2. The parties are referred to as per their rankings before the Trial Court. The appellant is defendant No.1, respondent Nos.1 to 3 are the plaintiff, defendant Nos.3 and 4 respectively.

3. Heard Sri. Jagadeesh D.C., learned counsel for the appellant as well as Sri. B.C. Venkatesh, learned counsel appearing for respondent No.1.



4. Learned counsel appearing for the appellant vehemently contended that the Trial Court has failed to take note of the contention of the appellant/defendant No.1 that, the Commission work conducted by the Court Commissioner is not appropriate and the sketch prepared and submitted to the Court for acceptance is not in accordance with law. The Trial Court ought not to have accepted the Commissioner report and it had to be rejected. The specific objections filed by appellant/defendant no.1 to the Commissioners report and the sketch were neither considered nor adjudicated upon by the Trial Court before accepting the Commissioners report and proceeding to pass the final decree. The sketch prepared and submitted by the Court Commissioner is completely erroneous and reflects a biased approach in measurement of the suit schedule property. The Court Commissioner while measuring the suit schedule property, left 2.3 meters i.e., 6.5 feet measurement which obviously caused loss to the appellant. The Court Commissioner without measuring the schedule property submitted the



report and Sketch. It is contended that, in the report of Court Commissioner, in Item No.4, there is an open well and therefore, defendant No.1 was also entitled to make use of the water from the open well. Similarly, while submitting the Report in respect of Item Nos. 1 and 2, in the upstairs (first floor), there is a staircase. However, the Commissioner has not shown the staircase in his report purposefully. In fact, the appellant has got right over the upstairs staircase. However, the same has not been shown. Therefore, the learned counsel prayed to allow the appeal by setting aside the judgment and final decree drawn by the trial Court.

5. *Per contra*, learned counsel appearing for respondent No.1 vehemently contended that the Court Commissioner has carried out the commission work in accordance with the directions issued by the FDP Court and in accordance with the provision of law and that no prejudice has been caused to any of the parties. The commission has prepared the sketch and report by dividing the suit schedule property into four equal blocks



in favor of the petitioner, respondents Nos.1, 3 and 4 measuring 20.23 X 7.55 meters each. It is contended that all sharers are allotted equally and there is no illegality committed by the Commissioner or the FDP Court. Hence, he prays to dismiss the appeal.

6. We have perused the Order passed by the trial Court in O.S.No.90/2013, wherein the trial Court decreed the suit by granting 1/4th share each in the schedule property in favour of the plaintiff, defendant No.1, 3 and 4 respectively. While decreeing the suit, the trial Court ordered for separate enquiry regarding *mesne* profit during the unauthorized occupation of the suit property as contemplated under Order XX Rule 12 and 18 of the Code of Civil Procedure, 1908, thus, directed to draw preliminary decree accordingly. Later, the plaintiff filed Final Decree Petition under Section 54 of Code of Civil Procedure for drawing the final decree in terms of preliminary decree passed in O.S.No.90/2013.



7. Before the FDP Court, the appellant appeared through his counsel, however, did not file any objection to the petition. A perusal of the records, further demonstrate that the appellant being aggrieved by the judgment and decree passed in O.S.No.90/2013, had preferred RFA No.89/2016 before this Court and RFA No.89/2016 was dismissed on 04.12.2023, thereby the judgment and decree of the trial Court was confirmed. However, the appellant not disputed the factual aspect as to confirmation of the judgment and decree passed by this Court in RFA No.89/2016.

8. The perusal of records, it further demonstrates that the trial Court appointed the Assistant Executive Engineer from Public Welfare Department, Koppa Sub-division as Court Commissioner, who conducted the commission work and filed his report by demarcating the share of the parties by virtue of the decree. The Court Commissioner had visited the property, inspected the same in presence of both the parties and after conducting a detailed inspection, demarcated the shares of the



appellant and respondents and submitted his report on 25.04.2025. It is also clear that, the appellant filed objections to the Commissioner report, contending that the Commission work conducted by the Court Commissioner is incorrect and sketch prepared by him is not in accordance with law.

9. The trial Court on careful perusal of the report and sketch submitted by the Court Commissioner and considering the fact that notice was issued to all the parties concerned and taken into consideration the fact that the Court Commissioner divided the property with four blocks equally, measuring 20.23x7.55 meters to the plaintiff and 20.23x7.56 meters were allotted to defendant No.1, 3 and 4 equally. It shows that the parties have allotted equal share among them, which is a single larger property. Therefore, the FDP Court accepted the report of the Court Commissioner and treated the sketch and report of the Court Commissioner as part and parcel of the final decree.



10. Though the appellant contended that there is a well and stair case in the property, same was not allotted to all the parties equally. Upon the perusal of the sketch there is no mention of the staircase in the schedule property. Though well is shown at one corner of the schedule property, there is no material to show that there is water in the well and the appellant has failed to demonstrate that the well was subject matter of the suit schedule property. Since, all the brothers have been allotted shares equally in the suit schedule property, the contention of the appellant with regard to staircase, does not have merit consideration.

11. Insofar as Well is concerned, when a property contains unique shared assets like a Well, the Court often maintain them as common enjoyment for all shareholders rather than attempting to physically destroy it. The physical division of a Well is impractical and would destroy its utility. Thus all the parties can use it to enjoy the possession till the Well is in existence. Hence, all shareholders can enjoy the Well to draw water if available.



12. In the Final Decree Proceedings, the Court allotted 4 shares equally to the petitioner, respondents No.1, 3 and 4. Since the shares were allotted equally to all the sharers, there is no illegality committed by the FDP Court. Accordingly, there is no merit in the matter. The appeal therefore fails, the same is accordingly ***dismissed***.

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

**Sd/-
(VENKATESH NAIK T)
JUDGE**

RAK
List No.: 1 Sl No.: 8