

KABR020027762021



**IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE,  
BENGALURU RURAL DISTRICT, BENGALURU.**

**PRESENT**

**Smt.MAMATHA SHIVAPUJI B.A.L., LL.M.,**  
IV Addl. Senior Civil Judge,  
Bengaluru Rural District, Bengaluru.

**Dated this the 26<sup>th</sup> Day of October 2024**

**FDP.No.36/2021**

**Petitioners** :1. Smt. Lourd Mary & Another.

**(By Sri. Y.N.S.R., Advocate)**

**- V/s. -**

**Respondents** :1. Smt. P. Nakshatra & Others.

**(By Sri. U.L., Adv for R1, Sri. B.R., Adv  
for R2 to 7 and Sri. S.S.N.,Adv for R6)**

**Orders on Commissioner Report dated 07.02.2023**

Above petition is filed by the plaintiffs / Petitioners seeking for division of the suit schedule property as per the Judgment and Decree in RA.No.117/2018 dated 15.07.2021 by Hon'ble VIII Addl. District & Sessions Judge, Bengaluru Rural District, arising out of Judgment and Decree in OS.No.100/2008 dated 02.08.2018.

2. After service of notice, in the above petition, the Respondents No.1 to 8 have appeared through their counsel. Meanwhile, Petitioner No.2 filed affidavit to appear as party in person. Respondent No.9 appeared as party in person and Respondent No.10 to 11 remained absent.

3. Further this court has appointed Commissioner for the purpose of division of the suit schedule property

vide order dated 06.04.2022. The Taluk surveyor / ADLR of K.R.Puram Taluk Bengaluru was appointed as court Commissioner. As per the order of this court, the Court Commissioner has submitted the Commissioner report on 07.02.2023 along with Sketch and relevant documents.

4. The Petitioner no.1 has filed objection to the report of Commissioner submitting that, the Court Commissioner has not visited the spot and he has not demarketed the boundaries of the suit schedule property. The report of the Commissioner is filed as per the instructions of defendant no.10. Further submitted that, Court Commissioner has not issued any notice to the Petitioners. The court commissioner has allotted the extent of land to defendant no.3 to 6, 7 & 8 which they are not entitled in the Preliminary decree as per order in RA.No.117/2018. Hence, the Petitioner no.1 prayed to

reject the Commissioner report and to pass necessary order for conducting the fresh survey by issuing notices to the parties to the above petition.

5. On the other hand, the Respondent no.7 has filed application Under Section 151 of CPC, seeking to pass final decree in terms of the report of the Commissioner. Further, submitted that, the Commissioner report is filed as per the direction of the court. Hence, prayed to draw final decree based on the Commissioner report.

6. Heard both side counsels and parties on the Commissioner report. Perused records. The following point arise for my consideration :

1. whether the Court Commissioner has conducted the survey and submitted the Commissioner report as per the

preliminary decree in RA.No.117/2018  
dated 15.07.2021 ?

7. My answer to the above point as below  
mentioned, for the following:

### **REASONS**

8. **Point No.1:** The Petitioner no.1 and 2/ plaintiff  
no.1 and 2 had filed OS.NO.100/2008 against the  
Respondent no.1 to 11 including the deceased defendant  
no.1 namely Philominamma seeking for partition of the  
suit schedule property in Sy No.23 measuring 3 Acres 05  
guntas situated at Seegehalli Village, K.R.Puram Hobli,  
Bengaluru East Taluk. Said suit came to be dismissed on  
02.08.2018. Subsequently defendant No.1 has been  
expired. The plaintiff no.1 and 2 have challenged the  
above Judgment and Decree in RA.NO.117/2018. The  
Hon'ble VIII Addl. District & Sessions Judge, Bengaluru

Rural District, has allowed the appeal and set aside the Judgment and Decree in OS.NO.100/2008.

9. The Hon'ble VIII Addl. District & Sessions Judge, Bengaluru Rural District court, held that the suit in OS.No.100/2008 decreed in part, the sale deed dated 18.02.2005 executed by defendant no.1 in favour of defendant no.10 is not binding on the share of the plaintiff no.1 and 2, defendant no.2 and 9 in respect of 2 acres of land out of 3.05 acres of land.

10. It is also held that the sale deeds dated 13.07.1995, 13.07.1995 executed in favour of defendant no.11 and sale deed dated 13.07.1995 executed in favour of defendant no.12 by the defendant no.1 are not binding on the share of plaintiff no.1 and 2 and

defendant no.1 to 9 in respect of the suit schedule property.

11. It is further held that, the GPA dated 28.11.1992 executed by defendant no.1 is also not binding on the plaintiff no.1 and 2 and defendant no.1 to 9.

12. The Hon'ble court further declared that the plaintiff no.1 and 2 and defendant no.2 to 9 are not entitled to share in 1 acre of land out of 3 Acres 05 guntas which is the 1/3rd share of defendant no.1 sold in favour of defendant no.10 under sale deed dated 18.02.2005.

13. It is also declared that, the plaintiffs and defendant no.2 and 9 are entitled to 1/7th share each in 2 acres out of 3.05 acres. Defendant no.3 to 6 together entitled to 1/7th share in 1 acre out of 3.05 acre. Defendant no.7

and 8 entitled to 1/7th share each in 1 acre out of 3.05 acre.

14. The Hon'ble court further in particularly held that, the plaintiffs, defendant no.2 and 9 are entitled to 1/7th share each in 2 acres of land, defendant no.3 to 6 together entitled to 1/14th share in 2 acres of land and the defendant no.7 and 8 are entitled to 1/14th share in 2 acres of land in Sy.No. 23 as described in the plaint schedule.

15. It is observed that the Court Commissioner in his report dated 07.02.2023 has produced survey sketch, wherein he has made division of total extent of 3 acres 5 guntas into 8 parts. The Commissioner has allotted 1 acre of land in favour of defendant no.10. Further, the Commissioner has made division of remaining 2 acres of



land into 7 parts, among them 5 divisions measuring 12.02 guntas and two divisions measuring 12.03 guntas towards 1/7th share each out of 2 acres 5 guntas. The Commissioner has made totally 7+1 divisions without mentioning the name of the parties as per allotment in the Preliminary decree.

16. It is further noticed that, as per the preliminary decree the defendant no.3 to 6 together entitled for 1/14th share and the defendant no.7 and 8 each are entitled for 1/14th share in the 2 acres of land. But the Commissioner has allotted 1/7th share to defendant no.3 to 6 together and 1/7th share defendant no.7 and 8 each which is not in accordance with the Preliminary decree.

17. It appeared that the Commissioner has made the divisions exceeding the share allotted to defendant No.3

to 6 and defendant no.7 & 8. Hence, it is clear that the Report of the Commissioner is not in accordance with the preliminary decree in RA.NO.117/2008 dated 15.07.2021. Therefore, the Commissioner report cannot be accepted and liable to be rejected.

18. On perusal of the entire records, Judgment and decree in RA.NO.117/2018 dated 15.07.2021, it is observed that the Hon'ble VIII Addl. District & Sessions Judge, Bengaluru Rural District, it is clear that the land is totally measuring 3 acres 5 guntas out of which the deceased defendant no.1 had acquired 1/3rd share in view of chapter II of Indian Succession Act. Since she has sold 2 acres of land in favour of defendant no.10 the Hon'ble court held that, the 1/3rd share of deceased defendant no.1 is not subjected for partition.

19. It is also pertinent to note that, since Alphonseraj, defendant no.7 and 8 have consented for the sale deed of the defendant No.10 their share in Two Acres of land is also not the subject matter for partition. Hence, it is clear that, defendant no.3 to 6, defendant no.7 and 8 are not entitled for share in the land which has been sold to defendant no.10. However, as the plaintiffs no.1 and 2 and defendant no.2 and 9 are not parties to the sale deed of defendant no.10, they are held to be entitled for 1/7 share in the land sold to defendant no.10 after deducting the 1/3rd share of deceased defendant No.1. That means the plaintiffs no.1 and 2 and defendant no.2 and 9 are entitled for 1/7th share each in 1 Acre out of two Acres of land which is sold to defendant No.1.

20. So, if **1 Acre** out of two Acres of land which is sold to defendant No.1 is divided in to 7 parts, each part will

come to 5.7 guntas. The plaintiffs no.1 and 2 and defendant no.2 and 9 are entitled for **5.7** guntas each in above 1 Acre of land ( $5.7 \times 4 = 22.8$ ). Whereas the 1/7th share of Alphonseraj (defendant No.3 to 6), defendant no.7 and 8 that is ( $5.7 \times 3$ ) totally measuring **17.1** guntas is already sold to defendant No.10.

21. Further So far as, with respect to the remaining 1 acre of land which was the subject matter of sale deed executed by deceased defendant no.1 in favour of defendant no.11 and 12 which have been held as null and void in the body of the judgment and further the court has held that the plaintiffs, defendant no.2, 7, 8 and 9 each and defendant no.3 to 6 together are entitled for 1/7th share each in said 1 acre of land. Therefore the plaintiff No.1 & 2, defendant No.2, Alphonseraj

(defendant No.3 to 6), defendant No.7 to 9 are entitled for **5.7 guntas each** out of 1 Acre (totally  $5.7 \times 7 = 39.9$  guntas).

22. The Hon'ble VIII Addl. District & Sessions Judge, Bengaluru Rural District, court has declared that the plaintiffs, defendant no.2 and 9 are entitled for 1/7th share each in 2 acres of land. Further, it is held that defendant no.3 to 6 together entitled to 1/14th share and defendant no.7 and 8 entitled to 1/14th share each in above 2 acres of land. (The said Two Acres means 1 Acre out of Two Acres sold to defendant No.10 and the remaining 1 Acre which was sold to defendant No.11 & 12).

23. Further it is noticed that the suit schedule property is totally measuring 3 Acres 05 guntas out of which the Hon'ble Court has calculated the 1/3rd share of defendant

No.1 as 1 Acre which is not subjected for partition. The land remained is 2 Acres 05 guntas. But the Hon'ble court has allotted share in 2 Acres only. The Hon'ble court has not made any observation with respect to remaining 05 guntas out of 3 Acres 05 guntas of land after subjecting 2 Acres for partition. Hence it is kept open to the parties for necessary legal remedy with respect to share in the remaining 05 guntas.

24. It is also noticed that, during the pendency of above petition, the petitioner No.1 has filed Review Petition Under Order 47 Rule 1 R/w.Sec. 152 and 153 of CPC before Hon'ble VIII Addl. District & Sessions Judge, Bengaluru Rural District. However, said Review petition came to be dismissed as time barred .

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25. For these reasons, it is clear that the Commissioner has not made division of the suit schedule property as per the preliminary decree in RA.NO.171/2018. Hence, the commissioner report cannot be accepted, but it is liable to be rejected. Therefore the following :

**ORDER**

The Commissioner report dated 07.02.2023 filed by ADLR, Bengaluru East Taluk, is hereby rejected.

Issue fresh Commissioner warrant to the ADLR, Bengaluru East Taluk, to conduct the survey and for division of the suit schedule property as per the shares allotted in the preliminary decree in RA.NO.171/2018 dated 15.07.2021.

The Commissioner is directed to allot the share to the parties as mentioned in the Table

below and submit the report and sketch before this court as early as possible.

Office is directed to issue Commissioner warrant along with the preliminary decree in RA.No.171/2018 and Copy of the above order.

### TABLE

Shares allotted to the parties in preliminary decree in RA.No.117/2018 in the suit schedule property in Sy.No. 23, measuring 3 acre 5 guntas, situated at Seegehalli Village,K.R.Puram Hobli, Bengaluru East Taluk.

BLOCK	Share	Extent	Name of the parties in RA.No.117/2018
I	1/7th in 2 Acres	5.7+5.7 = <b>11.4 guntas</b>	Plaintiff no.1 (Smt.Lourd Mary)
II	1/7th in 2 Acres	5.7+5.7 = <b>11.4 guntas</b>	Plaintiff no.2 (Smt.Pouline)
III	1/7th in 2 Acres	5.7+5.7 = <b>11.4 guntas</b>	Defendant no.2 (Smt.P.Nakshatra)
IV	1/7th in 2 Acres	5.7+5.7 = <b>11.4 guntas</b>	Defendant no.9 (Smt.P.Michel Rani)
V	1/14th in 2 Acres	<b>5.7 guntas</b>	Defendant no.3 to 6 (Smt. Susena Marry, Mr. Marry Susan, Mr.Gnanaprakash and Mr. Praveen Kumar)



VI	1/14th in 2 Acres	<b>5.7 guntas</b>	Defendant no.7 (Mr.P. Anthony Raj)
VII	1/14th in 2cares	<b>5.7 guntas</b>	Defendant no.8 (Mr. P.Abraham)
VIII	1/3rd share of deceased defendant no.1 and 1/7th share of defendant no.3 to 6 together and 1/7th share of defendant no.7 & 8 in 1 Acre out of 2 acre which is sold to defendant No.10	1 acre + 5.7+5.7+5.7 guntas = <b>1 Acre 17.1 guntas</b>	Defendant no.10 (Mr.D.Venkatesh)

**Total = 3 Acres**

**(05 guntas not subjected to partition, hence kept open for remedy)**

(Dictated to the stenographer directly on computer, corrected and pronounced in open court on this the 26<sup>th</sup> day of October 2024)

**(MAMATHA SHIVAPUJI)**

IV Addl. Senior Civil Judge,  
Bengaluru Rural District, Bengaluru.

**Order pronounced in the open court,**  
**vide separate order**

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