

ORDERS ON I.A. NO.I

The Respondent no.27 has filed this application under Order 20 Rule 18 read with Sec.151 of CPC praying to draw up supplemental preliminary decree in favour of applicant/defendant no.10 herein by declaring her 1/44th share in the plaint 'A' schedule properties..

2. In the affidavit annexed to the application it is stated that, she is the applicant and respondent no.27 in final decree petition and defendant no.10 in the suit. A suit in O.S.No.188/2003 was decreed vide Judgment and Decree dated 17.10.2008. The petitioners in FDP No.18/2020 filed before this court as plaintiff nos.5, 7, 8 and 9 respectively in the said suit and she is defendant no.10 in the said suit and 27th respondent in FDP No.18/2020. In the preliminary decree passed in the suit, this court has directed the division of the plaint schedule property amongst plaintiffs and the defendants by declaring the share of plaintiff nos.1 to 3 are entitled to 1/11th share each and the defendant nos.11 to 19 are jointly entitled to 1/11th share in item no.1 to 11 and 15 of the plaint 'A' schedule property, 4th plaintiff is entitled to 1/11th share and

plaintiff no.5 to 9 are jointly entitled to 1/11th share in all items of the plaint 'A' schedule properties. The defendant no.4 is entitled to 9/11th share in item nos.12 to 14 and 16 to 19 and 4/11th share in item nos.1 to 11 and 15 of the plaint 'A' schedule properties. This respondent's share has not been declared in the above preliminary decree already passed by this court and as such her share is required to be declared before effecting partition of the properties as already ordered and she is also entitled to have 1/44th share in the plaint schedule properties duly declared. Hence, as defendant no.10 in the above suit she is entitled to get her 1/44th share in all items of the suit properties so as to enable her to have her share separated and allotted to her. Hence, a supplemental decree declaring her share by ordering to draw a supplemental decree as prayed for in the application may be ordered. Hence, prayed to grant the relief as prayed in the application.

3. The respondent nos.21 and 22 have filed objections and contended that, the application is false, vexatious and not maintainable either in law and facts of the case. The present application is barred by limitation. The applicant herein had not challenged the preliminary decree passed in O.S.No.188/2003. Hence, the said preliminary decree has become final. As per preliminary decree,

defendant no.6 to 10 who are the legal heirs of late Theresa Rodrigues are entitled to 1/11th share in item no.1 to 11 and 15 of the decree 'A' schedule properties. Late defendant no.6 Sylvester Rodrigues has expired and his legal heirs i.e., defendant no.7 to 10 who are respondent no.24 to 27 are entitled to 1/11th share in item no.1 to 11 and 15 of the decree 'A' schedule properties. The defendant no.10 is entitled to $1/11 \times \frac{1}{4} = 1/44$ th share only in item no.1 to 11 and 15 of the decree schedule properties. In item no.12 to 14 and 16 to 19 of the decree 'A' schedule properties, applicant/defendant no.10 is not entitled to any share. O.S.No.188/2003 has been already disposed and no appeal also been preferred., hence it has become final. Hence, prayed to reject the application with costs.

4. Heard both sides.

5. Perused all materials available on record.

6. Now the points that arise for consideration are as follows;

1. Whether the application deserves to be allowed?

2. What order?

7. My answer to the above points are as hereunder:

Point No.1: In the Affirmative.

Point No.2: As per the final order
for the following:

REASONS

8. **Point No.1:-** The defendant no.4 in O.S.No.188/2003 has filed F.D.P.No.15/2020 in the said petition coloum (h) it has stated that, defendant no.6 to 10 are who are the children of Theresa Rodrigues and respondent no.14 to 17 are the legal heirs of late. Sylvester Rodrigues are entitled for the 1/ 11th share in item no.1 to 11 and 15 of the Decree A schedule properties and respondent no.14 to 17 are entitled for 1 /44th share in the properties. Therefore, the defendant no.4 therein has admitted the share of defendant no.10 and the respondent no.27 herein.

9. But the defendant no.4 has filed objection to this application contending that, the respondents is having 4/11 share in other item of properties viz item no.1 to 11 and 15 of decree schedule properties remaining share to which is entitled could be allotted in item no.1 to 11 and 15 of schedule properties after equalization of value and also contended

that, averments in affidavit are false. But the same defendant no.4 has clearly admitted the share of defendant no.10 i.e., respondent no.27 in the petition filed by him in FDP No.15/2020. Therefore, the objections of the respondent no.22 i.e., defendant no.4 therein is not tenable. Hence, the defendant no.10 i.e., respondent no.27 herein is entitled for 1/44th share in the plaint A schedule properties. Therefore, if this application is allowed no hardship will cause to the respondent no.22. Accordingly, point No.1 is answered in the **Affirmative**.

10. **Point No.2:-** In view of the above discussion, I proceed to pass the following:

ORDER

I.A. No.I filed by the
applicant/respondent no.27
under Order XX Rule 18 R/w
Section 151 of CPC is hereby
allowed.

It is declared that respondent
No.27 is entitled to 1/ 44th share
in plaint 'A' schedule property.

Office to draw supplemental
preliminary decree accordingly.

For Await report

Call on 12.06.2024.

**II Addl. Civil Judge,
Mangaluru.**