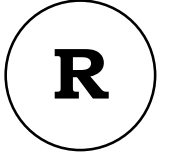


Reserved on : 24.09.2025
Pronounced on : 10.12.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF DECEMBER, 2025



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.11957 OF 2025 (GM – CPC)

BETWEEN:

SRI S.P.SURESH
S/O LATE S.P SATISH
AGED ABOUT 63 YEARS
NO.5, JAKKASANDRA BLOCK
BENGALURU - 34
REPRESENTED BY HIS GPA
HOLDER AND WIFE,
MRS.RENU SURESH.

... PETITIONER

(BY SRI K.G.RAGHAVAN, SR.ADVOCATE A/W
SMT.SINDHU V., ADVOCATE)

AND:

1 . LATE SMT. VINODA SATISH
AGED ABOUT 86 YEARS
W/O LATE S.P.SATISH
NO.5, JAKKASANDRA BLOCK
KORMANGALA LAYOUT
BENGALURU - 34
(DIED ON 27.11.2024)

SMT. S.P.POORNIMA
AGED ABOUT 59 YEARS
W/O SRIKANTARADHYA M.G.,
NO.393, 8TH CROSS, 9TH MAIN,
4TH BLOCK, ST BED KORMANGALA
BENGALURU - 34
(SINCE DEAD THROUGH HER LR'S)

- 2 . SRI. SHARAN SHRIKANT
S/O. LATE POORNIMA
AGED ABOUT 45 YEARS
RESIDING AT NO.5,
JAKKASANDRA BLOCK,
7TH CROSS, KORAMANGALA
BENGALURU – 560 034.
- 3 . SRI. VARUN SHRIKANT
S/O.LATE POORNIMA
AGED ABOUT 41 YEARS
RESIDING AT NO.5,
JAKKASANDRA BLOCK,
7TH CROSS, KORAMANGALA
BENGALURU – 560 034.
- 4 . SRI M.G.SHRIKANT ARADYA
AGED ABOUT 70 YEARS
NO.393, 8TH CROSS,
9TH MAIN, 4TH BLOCK,
ST BED KORAMANGALA
BENGALURU – 34.
- 5 . SMT. SUJAYA MAHESH
AGED ABOUT 65 YEARS
W/O. S.V.MAHESH
NO.532, 7TH CROSS,
4TH BLOCK, KORAMANGALA

BENGALURU – 560 034.

... RESPONDENTS

(BY SRI UDAYA HOLLA, SR.ADVOCATE A/W
SRI AKSHAY KUMAR JAIN, ADVOCATE FOR R2 TO 4;
SRI KIRAN S.JAVALI, SR.ADVOCATE A/W
SRI GIREESHA KODAGI, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THE CONCLUDING PORTION OF THE ORDER DATED 14.11.2024 (ANNEXURE-A) PASSED BY THE XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-10) IN FDP 181/2011 WHEREIN IT HELD THAT THE PETITIONER'S CLAIM FOR MESNE PROFITS WILL BE CONSIDERED ONLY AFTER COMPLETION OF THE AUCTION PROCESS; SET ASIDE THE ORDER DATED 26.11.2024 (ANNEXURE-A) PASSED BY THE XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-10) IN FDP 181/2011 WHEREBY THE PETITIONER'S BID FOR PURCHASE OF SCHEDULED PROPERTY IS NOT ACQUIESCED; DIRECT THE TRIAL COURT TO DETERMINE THE PETITIONER'S SHARE IN THE RENTAL INCOME FROM THE SCHEDULE PROPERTY IN ACCORDANCE WITH LAW; DIRECT THE TRIAL COURT TO CONDUCT THE PROCEEDINGS FOR SALE / AUCTION OF THE SCHEDULE PROPERTY STRICTLY AS PER THE PROVISIONS OF PARTITION ACT, 1893.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner - the respondent in FDP.No.181/2011, is at the doors of this Court seeking slew of prayers, which are as follows:

- "(i) Issue a writ of certiorari or any other writ, order, rule or direction to quash and set aside the concluding portion of the Order dated 14 November 2024 (ANNEXURE - A) passed by the XVIII Additional City Civil and Sessions Judge, Bengaluru (CCH-10) in FDP 81/2011, wherein it held that the Petitioner's claim for mesne profits will be considered only after completion of the auction process.
- (ii) Set aside the order dated 26.11.2024 (ANNEXURE - A) passed by the XVIII Additional City Civil and Sessions Judge, Bengaluru (CCH-10) in FDP 81/2011 whereby the Petitioner's bid for purchase of Schedule Property is not acquiesced.
- (iii) Direct the Trial Court to determine the Petitioner's share in the rental income from the Schedule Property in accordance with law;
- (iv) Direct the Trial Court to conduct the proceedings for sale / auction of the Schedule Property strictly as per the provisions of Partition Act, 1893.
- (v) Issue such others or directions that this Hon'ble Court may deem fit to pass in the facts and circumstances of the case, including costs, in the interests of justice and equity."

2. Facts in brief, germane, are as follows:

Before embarking upon the consideration of the issue on its merit, I deem it appropriate to notice the ranking of the

protagonists in the subject petition. The petitioner is the respondent in the FDP proceedings and respondent Nos.2 to 4 are the legal representatives of deceased respondent No.2, who were represented as petitioner Nos.2 (a) to (c) before the concerned Court, as the second respondent one Smt. S.P.Poornima dies during the pendency of final decree proceedings and respondent No.1 is no more and respondent No.5 is one of the class I legal heir. The first respondent is the wife of one late S.P.Satish; S.P.Satish dies in the year 1989 leaving behind the said Smt. S.P.Poornima and two children including the present petitioner. A suit is instituted in O.S.No.6294/2003 seeking partition and separate possession by the respondents herein. The said suit comes to be decreed in the year 2006 granting 1/4th share of the scheduled property to the petitioner. The petitioner challenges the said judgment and decree before this Court in R.F.A.No.1288/2006, which comes to be dismissed on 05.07.2011. The present petitioner challenges the said dismissal before the Apex Court in SLP (C) No.29718/2011, which also comes to be disposed, in terms of an order dated 09.12.2011. It is thereafter, the respondents institute final decree proceedings in FDP.No.181/2011 to enforce the preliminary decree

passed in O.S.No.6294/2003 and demarcate the shares of the parties.

2.1. The concerned Court appoints one E. Kiran Kumar as the Court Commissioner (hereinafter referred to as 'the first Court Commissioner'). The first Court Commissioner issues a notice proposing to inspect the property on 24.11.2011. He visits the property and submits a report on the inspection so conducted. The concerned Court in terms of its final order dated 12.11.2013, on receipt of the report from the first Court Commissioner orders demolition of the existing building on the schedule property. Against the said final order, the respondents prefer an appeal in RFA.No.1988/2013 contending that the property cannot be divided by metes and bounds and sought that the schedule property be sold by public auction. The petitioner files another appeal in RFA.No.70/2014, contending otherwise.

2.2. On 11.01.2021, a coordinate bench of this Court sets aside the final order in FDP.No.181/2011 and restores the final decree proceedings on the file of the concerned final decree Court for reconsideration. On such reconsideration, the first Court

Commissioner was made to give his evidence concerning the schedule property. In the final decree proceedings, an application in I.A.No.7 invoking Section 2 of the Partition Act, 1893 (hereinafter referred to as 'the Act') is filed by the deceased first respondent seeking sale of the schedule property and to distribute the sale proceeds among the sharers of the schedule property. The said application comes to be allowed by the concerned Court on 05.09.2022, directing sale of the schedule property and distribute the sale proceeds among all the co-sharers. The petitioner did not file any objections to the said application. The concerned Court on 24.11.2022, issues a sale proclamation and sale warrant to schedule the sale of the property in public auction on 20.01.2023 and court sale on 27.01.2023.

2.3. It is the claim of the respondents that the petitioner though advanced the matter to 21.01.2023, but failed to file any application seeking leave of the concerned Court in terms of Section 3 of the Act. On 21.01.2023, the petitioner comes with two applications in I.A.No.8 to reopen the case to lead evidence and I.A.No.9 for determination of mesne profits arising out of the

schedule property, under Order XX Rule 18 of the CPC, seeking an enquiry to be conducted for determining into his share in the amounts received from the schedule property. Both applications comes to be allowed by the concerned Court. An enquiry regarding mesne profits and the share of the petitioner in the mesne profits derived from the schedule property was completed by producing necessary documents and evidence.

2.4. When things stood thus, the trial Court appoints Sri B.T.Girish as the Court Commissioner (hereinafter referred to as 'the second Court Commissioner') upon suggestion of all the parties. The second Court Commissioner submitted a report that the guidance value of the property is Rs.13,408 per sq. ft. and the entire value of the property is Rs.5,36,32,200/-. The concerned Court passes an order on 14.11.2024, on the report of the second Court Commissioner by accepting the valuation report of the schedule property at Rs.5,36,32,200/- and directed to auction the schedule property with liberty to the co-sharers to purchase the property in the public auction. Thereafter, respondent Nos.1 and 5 file application in I.A.No.19 under Section 151 of the CPC seeking a

direction from the concerned Court to petitioner to vacate from the schedule property, so that the schedule property can be put to public auction. The concerned Court held that I.A.No.19 would be considered only after completion of the auction. The impugned order dated 14.11.2025, directing that the schedule property be put to public auction without determining the share of the petitioner by metes and bounds and the order dated 21.11.2024, which does not take into consideration the bid amount offered by the petitioner, has lead the petitioner to knock at the doors of this Court contending that the applicant seeking relief under Section 3 of the Act, first preference would be rendered at the hands of the co-sharer to buy the property and then the public auction can be resorted to. The matter is heard at that stage.

3. Heard Sri K.G.Raghavan, learned senior counsel along with Smt. Sindhu V., learned counsel for the petitioner, Sri Udaya Holla, learned senior counsel along with Sri Akshay Kumar Jain, learned counsel for respondent Nos.2 to 4 and Sri Kiran S. Javali, learned senior counsel along with Sri Gireesha Kodagi, learned counsel for respondent No.5.

4. This Court owing to the submissions of the parties has passed certain orders directing a dialogue to resolve the dispute as the parties were warring siblings. On 11.06.2025, this Court had passed the following order:

"The petitioner is before the Court calling in question the action of the concerned Court seeking to put up the property for public auction.

The property in the case at hand is the share that has fallen to the respective siblings. The property is a residential house measuring 50'x80' in Koramangala. The issue is whether the concerned Court could have put up the property for public auction in the teeth of Sections 2 and 3 of the Partition Act, 1893 ('Act' for short).

The learned counsel for the petitioner would vehemently contend that Section 3 cannot be given a go-bye by the concerned Court and the co-sharer in a decree of partition is entitled to the first choice of purchase of the property.

The learning senior counsel Sri Udaya Holla appearing for one of the respondents would seek to place reliance upon Section 3(2) of the Act, which permits, if two or more shareholders severally apply for leave to buy the property, under Section 3(1), the Court shall order sale of the shares to the shareholders who offers to pay the highest price above the valuation made by the Court.

The valuation made by the Court has jumped 3 times, which began at Rs.6,40,00,000/- and Rs.6,80,00,000/- and now stands at Rs.7,20,00,000.

The learned senior counsel Sri Kiran S Javali appearing for one of the respondents would submit that he is ready and

willing to pay Rs.8,00,00,000/- to the said property. Therefore, the issue now boils down to Section 3(2).

Since all the contesting parties are siblings, I deem it appropriate to direct them to have a dialogue between them and arrive at a figure, which is the mandate of Section 3(2) as well. In the event of nothing coming out from the aforesaid observation, the matter would be considered on its merit.

List the matter on **20.06.2025**.

Interim order, granted earlier, is extended till the next date of hearing."

(Emphasis supplied)

No settlement arrived at and therefore, the matter is reserved for its orders.

5. Sri K.G.Raghavan, learned senior counsel for the petitioner would vehemently contend that the order dated 14.11.2024, deferring the adjudication for determination of the share in the mesne profits of the schedule property is in violation of the order dated 02.03.2023, passed on I.A.No.9, which had previously allowed and directed adjudication of the share of the petitioner from the mesne profits arising out of the property. Order XX Rule 18 (2) of the CPC directs that where the suit is for partition and separate possession of the immovable property and to determine the share

in the rents or mesne profits of the schedule property, the concerned Court has power to pass such decree if the partition or separation cannot be conveniently made and without any further inquiry order for determination of the shares of the co-sharers, which has accrued on the mesne profits. Learned senior counsel would submit that the concerned Court has determined $\frac{1}{4}$ th share in the mesne profits of the schedule property. If a co-sharer who expresses interest in the schedule property, in terms of Section 3 of the Act, the concerned Court ought to have obtained willingness from other co-sharers to participate in the auction.

6. He submits that the petitioner has indivisible right to purchase the property and therefore, the concerned Court exercising powers conferred under Section 3 of the Act, if the co-sharer who has approached the concerned Court under Section 2 of the Act seeking sale of the schedule property and distribution of the sale proceeds amongst the sharers, instead of partition and separate possession which cannot be conveniently made by metes and bounds, shall not be entitled to purchase the buy such schedule

property of other co-sharer in terms of Sub-section (1) of Section 3 of the Act.

7. *Per contra*, Sri Udaya Holla, learned senior counsel appearing for respondent Nos.2 to 4 submits that the subject matter of the present petition was also a subject matter in RFA No.1988/2013 and the coordinate bench held that the scheduled property cannot be divided by metes and bounds and therefore, it should be brought to sale on auction. Therefore, the subject petition is filed by the petitioner to obstruct the process of public auction. The concerned Court has deferred to determine the mesne profits of the petitioner until completion of the auction proceedings. The trial Court directed the second Court Commissioner that in terms of the order dated 26.11.2024, a public auction be held and also issued notice of public auction of the scheduled property, which was slated to be held on 22.04.2025.

8. At that point in time, the impugned orders are challenged by the petitioner, without even being filed any application seeking to purchase the property. The trial Court while exercising its power under Section 3 of the Act granted liberty to the parties to purchase

the property on the basis of the valuation or even the higher price. The petitioner never registers his name. Section 3 of the Act contemplate that the sale of the property which cannot be divided by metes and bounds and if it cannot be divided, the sale of the schedule property be ordered by the trial Court and distribution of property should be for the benefit of all the co-sharers of the property.

9. I have given my anxious consideration made by the learned senior counsel for the respective parties and have perused the material on record.

10. In furtherance whereof, the only issue that arises for consideration is, whether the concerned Court was right in proceeding to sell the schedule property by way of public auction.

11. To consider the aforesaid issue, it becomes germane to notice the provisions of the Act. Sections 2, 3, 4, 6 and 7 of the Act reads as follows:

"2. Power to court to order sale instead of division in partition suits.—Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, **a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.**

3. Procedure when sharer undertakes to buy.—(1) If, in any case in which the court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

4. Partition suit by transferee of share in dwelling house.—(1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a

valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

.... ..

6. Reserved bidding and bidding by shareholders.—

(1) Every sale under Section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Procedure to be followed in case of sale.—Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely:—

- (a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, ⁵[* * *] the procedure of such court in its original civil jurisdiction for the sale of property by the Registrar;
- (b) if the property be sold under a decree or order of any other court, such procedure as the High Court may form

time to time by rules prescribe in this behalf, and until such rules are made, the procedure prescribed in the Code of Civil Procedure (14 of 1882) in respect of sales in execution of decrees.”

(Emphasis supplied)

Section 2 of the Act deals with power of the Court to order sale instead of division in partition suit. It holds that whenever, in any partition suit, the division of property cannot be made reasonably and conveniently, the sale of the property and distribution of sale proceeds would be beneficial for all the share holders, the Court on the request of any such share holder interested individually or collectively, direct sale of such property and distribute the sale proceeds to all the share holders. Section 3 of the Act deals with the procedure when the co-sharer undertakes to buy the schedule property. The concerned Court, on the request of the co-sharer under Section 2 of the Act, shall put the schedule property to auction and distribute of the sale proceeds, if the other co-sharer applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, shall order a valuation of the share or shares in such manner as the case would be and offer to sell the same to such shareholder at the price so ascertained,

and may give all necessary and proper directions in that behalf. Sub-section (3) of Section 3 holds that if no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant would be liable to pay all costs that would ensue.

12. These are the interpretations of the afore-quoted provisions, which are necessary to be noticed to resolve the issue at the case at hand. For which, driving back to the facts of the case and the orders of the concerned Court would become necessary. The concerned Court on 12.11.2013, passes an order to demolish the existing building on the schedule property in FDP.No.181/2011 for the purpose of division of the share in the scheduled property. This is called in question by both the petitioner and the respondents in RFA.Nos.1988/2013 c/w. 70/2014. The coordinate bench in terms of the judgment dated 11.01.2021, while setting aside the order dated 12.11.2013, holds that it was difficult to divide the schedule property by metes and bounds and it is convenient to sell the scheduled property in public auction and distribute the sale proceeds among the sharers. The order of the coordinate bench reads as follows:

“

3. The appellants in RFA No. 1988/2013 have filed an application for appointment of a Court Commissioner to visit the subject property and file a report as regards the feasibility of dividing the subject property by metes and bounds into four portions. The Final Decree Court has allowed this application and has appointed Shri Kiran Kumar, an advocate, as the Court Commissioner. **This Court Commissioner has filed his Report after visiting the Subject property on 24.11.2011. The Court Commissioner, as referred to in the impugned order, has opined that the subject property cannot be divided by metes and bounds into four portions with access to the road on the northern side because in the event of such partition each of the parties would get an extent measuring 12.5 feet East to West and 80 feet North to South and these extents would not be suitable for construction of individual residential houses. The Court Commissioner has recommended a division of the subject property with each of the parties getting 20 feet East to West and 50 feet North to South with a 5 feet passage on the eastern side along the entire length of the property.**

4. The appellant in RFA No. 70/2014, the son, has filed objections to this Court Commissioner's Report stating *inter alia* that the Court Commissioner has not measured the built-up area and the existing structure could be divided equitably with $\frac{1}{4}$ undivided share in the sital area being allotted to each of the stakeholders. On the other hand, the appellants in RFA No. 1988/2013 have contended that the division of the subject property by metes and bounds would not be feasible and the subject property must be brought to sale in an auction.

5. The Final Decree Court overruling the submissions made by the parties as well as the Court recommendations in the Commissioner's Report has directed demolition of the existing structure with partitioning of the subject property into four portions with each of the parties getting 20 feet X 50 feet with 6 feet passage along the entire length of the property on the eastern side and the appellant in RFA No. 70/2014 being given the portion abutting the road on the north.

6. The learned Counsel for the parties in unison submit that the Final Decree Court has passed the order for demolition of the existing structure and for partition of the subject property amongst the four stake holders as aforesaid without the Court Commissioner being examined and without opportunity to the parties to lead evidence in support of their respective stand as regards the division of the subject property by metes and bounds with the appellants in RFA No. 1988/2013 specifically contending that the subject property should be brought to sale in an auction.

7. Sri Kiran Javali, learned Counsel who appears for the appellants in RFA 1988/2013 submits that the Final Decree Court has passed the order in the most unscientific manner reiterating the appellants' case that the subject property, which measures 50 feet East to West and 80 feet North to South with road on its south cannot be partitioned equitably and the property will have to be brought to sale. Sri Chandranath Ariga, the learned Counsel for the appellant in RFA No.70/2014, submits that the subject property could be divided equitably without even demolishing the standing structure if the built up area is considered.

8. Parallely, it is also submitted that the first appellant in RFA No. 1988/2013, who is the mother, is 84 years old and appropriate arrangements will have to be made for her maintenance until the question of whether the subject property could be divided by metes and bounds or brought to sale is decided and there is consensus amongst the learned Counsel, including Sri Girish Kodgi who appears for some of the appellants in RFA No. 1988/2013, that a sum of Rs.25,000/- per mensem would be reasonable maintenance with two children Sri S.P.Suresh and Smt.Sujaya Mahesh contributing one-third each and the legal representatives of the deceased daughter, Smt. S.P.Poornima, together contributing the remaining one-third. There is also consensus that one of the legal heirs of the deceased daughter Sri Varun Shrikant is in possession of the premises.

9. The provisions of Section 2 of the Partition Act, 1893 stipulate that when a suit for partition is decreed, and it appears to the Court that given the nature of the

property and the number of shareholders an immovable property cannot be reasonably partitioned by metes and bounds and sale of the immovable property and distribution of the sale consideration would be more beneficial to the shareholders, the Court can, on a request by the parties, direct sale of the property and distribution of the proceeds. It is obvious from the records as well as the submissions by the learned counsel for the parties that while the mother and the daughters (including the legal representatives of the deceased daughter) assert that the subject property cannot be divided by metes and bounds and therefore should be brought to sale on an auction, the son asserts that if the built-up area of the subject property is considered, the subject property could be divided equitably by metes and bounds. The Commissioner's report is for division of the subject property in a particular manner with 5 feet common passage along the entire length of the property on the eastern side.

10. In the light of the provisions of the Partition Act and the rival contentions as regards the partitioning of the subject property by metes and bounds, the Final Decree Court should have extended an opportunity to the parties to lead evidence in support of their respective stands. Further, in the facts and circumstances of the case, unless there is consensus for demolition of the existing structure, there could not have been an order for demolition. For the foregoing, the impugned order dated 12.11.2013 cannot be sustained and the proceedings should be restored to the Final Decree Court for reconsideration, and in the light of the consensus as regards the maintenance to be paid to the mother, the first appellant in RFA No. 1988 of 2013, appropriate orders in these regards would also be just. As such the following:

ORDER

[a] The impugned order dated 12.11.2013 passed in FDP No.181/2011 by the learned XVIII Addl.City Civil Judge, Bengaluru is set aside. The Final Decree

Proceedings in FDP No. 181/2011 is restored to the board of the Final Decree Court for readjudication.

[b] The parties shall appear before the Final Decree Court without further notice on 05.02.2021. The Final Decree Court shall dispose of the proceedings expeditiously in accordance with law within an outer limit of six months from the date of first appearance.

[c] The parties as aforesaid shall pay a sum of Rs.25,000/- per mensem to the mother Sri Vinoda Sathish starting from 1st December 2020 (payable on or before 25.01.2021) as maintenance and continue to pay the aforesaid sum until the disposal of the Final Decree Proceedings. They shall also be responsible for meeting the medical expenses, if any and in the event of failure by any, there shall be a charge on the share that they could assert."

(Emphasis supplied)

The coordinate bench holds that in terms of Section 2 of the Act, when the scheduled property cannot be divided by metes and bounds, the concerned Court shall direct to sell on an auction, upon the consent of the parties. It also observed that the mother and daughters acceded to sell the property but the son – petitioner herein, is otherwise. The petitioner herein has shown interest that the scheduled property can be divided equitably by metes and bounds. Therefore, the FDP.No.181/2011 stood restored.

13. The concerned Court after restoration of FDP.No.181/2011, by the impugned order dated 14.11.2024, passed the following order:

"ORDER ON REPORT OF THE COURT COMMISSIONER

This court initially passed order dated 12.11.2013 by accepting report of the Court Commissioner. The said order was challenged before Hon'ble High Court of Karnataka in R.F.A No. 1988/2013 and R.F.A.No. 70/2014. The Hon'ble High Court of Karnataka by order dated 11.01.2021 allowed both files and order passed by this court was set aside with direction to dispose of the proceedings expeditiously. The Hon'ble High Court of Karnataka in said R.F.As in Para No.9 held as under.

"The provisions of Section 2 of the Partition Act, 1893 stipulate that when a suit for partition is decreed, and it appears to the Court that-given the nature of the property and the number of shareholders an immovable property cannot be reasonably partitioned by metes and bounds and sale of the immovable property and distribution of the sale consideration would be more beneficial to the shareholders, the Court can, on a request by the parties, direct sale of the property and distribution of the proceeds."

Thereafter, this court by order dated 02.07.2024 directed the both parties to appoint the Court Commissioner for valuation of the suit property. Accordingly they suggested the name of one B.T.Girish Advocate as a Court Commissioner and he was appointed as a Court Commissioner and he filed report by showing valuation of the suit property. Both side submitted no objection to the report of the Court Commissioner. As per the report of the Court Commissioner the valuation of the suit property is Rs.5,36,32,200/-. The petitioner No.1 is mother of petitioner No.2 and 3 and respondent. Petitioners have got 3 shares and respondent has got 1 share in the suit property as per the preliminary decree. The Court Commissioner has valued the land as well as existing building. Looking to the nature of the suit property and it's measurement it is not feasible to divide the suit property by meets and bounds for convenient

use and enjoyment. **In view of the observation of Hon'ble High Court of Karnataka in above said R.F.A. and for purpose of convenient use and enjoyment of suit property this court is of the considered opinion that the suit property shall be sold in public auction and said proceeds/ consideration amount has to be distributed among petitioners and respondent as per decree. In auction proceedings, the petitioners as well as respondent can participate and they can give offer to purchase the suit property and if they are not ready to purchase the suit property then the suit property shall be sold to third person and sale proceeds shall be divided among shares as per the decree.**

Hence, I proceed to pass the following:

ORDER

Acting under Section 2 of Partition Act, the report filed by the Court Commissioner is accepted the suit property shall be put to auction. Petitioners as well as respondent are at liberty to purchase the suit property on the basis of the valuation submitted by the Court Commissioner or even on higher price. If both parties to the suit are not ready to purchase to the suit property then suit property shall be sold to third party.

For suggesting the name of the Court Commissioner for purpose the auction, time is granted to both side.

The application filed by the petitioners I.A. No. 19 under Section 151 CPC seeking direction to both parties to the suit to vacate the suit property will be considered after auction of the suit property. Both parties to the petition shall not cause obstruction to auction process.

Likewise the contention of the respondent to award mesne profits will also be considered only after completion of auction process.

Call on 21/11/24

Sd/-14/11

XVIII Addl. City Civil Judge,
Bengaluru.

(Emphasis added)

The concerned Court relying on the report of the second Court Commissioner, holds that the property being sold in the public auction is beneficial to all the share holders. Again on 21.11.2024, the concerned Court observed that the petitioner has not shown bonafides to buy the scheduled property in auction and therefore, passed the following order:

Advocate for respondent filed memo stating that they are ready to purchase suit property.

Advocate for petitioner no.1 and 3 filed memo stating that they are willing to purchase the suit property for Rs.6,40,00,000/-.

Respondent has not shown consideration amount, hence he shall show the same by next date.

Call on 26.11.2024.

Sd/-21/11/2024
XVIII ACC & SJ, Bengaluru."

These afore-quoted orders have driven the petitioner to this Court in the subject petition.

14. The auction of the property was scheduled to be held on 22.04.2025. As observed at that juncture, the petitioner approaches this Court in the subject petition. This Court had directed a dialogue between the parties to arrive at a settlement. The settlement did not come about. Therefore, the matter is taken up on its merit. The petitioner now projects that he is ready and willing to purchase the property. It becomes germane to notice that pursuant to the order passed by this Court on 11.01.2021 in R.F.A.No.1988/2013 c/w R.F.A.No.70/2014, whereby the Final Decree Proceedings were restored on the file of the trial Court, all the parties were given the opportunity to lead evidence. On 05.09.2022, the respondent No.1 who was then alive, files an application under Section 2 of the Act seeking for an order of sale of the property and distribution of the sale proceeds among the sharers of the schedule property. The petitioner does not even appear as he was not residing in this country. Throughout the proceedings, he remains absent, his objections were taken as nil.

15. It is then the trial Court passes an order allowing I.A.No.7 and orders the sale of the property in public auction and for the sale

of proceeds divided and thereby issued a sale notice. The concerned Court on 24.11.2022, issued a sale proclamation and sale warrant to hold the public auction on the spot on 20.01.2023. The petitioner then coming to know of the sale, advances the matter by appearing before the Court on 21.01.2023, did not file any application seeking leave of the Court to purchase the property in terms of Section 3 of the Act. Thereafter, the Final Decree Proceedings were pursued by the petitioner for determination of mesne profits only. The petitioner does not challenge any of the orders that are passed hitherto, putting the property to public auction.

16. On 02.07.2024, the concerned Court directs both the parties to appoint a Court Commissioner for valuation of the subject property. One Advocate Sri.B.T.Girish is appointed and the valuation of the property is made at Rs.5,36,32,200/-. Both the petitioner and the respondents say no objection to the Commissioner's report. Thereafter, the concerned Court on 14.11.2024 directed measurement of the property and holds that it was not feasible to divide the property by metes and bounds for convenient use and enjoyment. Therefore, the property was sought

to be put to public auction. The respondents then file a memo before the concerned Court that they are willing to purchase the property at Rs.6,40,00,000/-. Even then, the concerned Court was of the opinion that if the property was put to sale, it would be beneficial to all the sharers. The respondents have no objection to put the property to sale by public auction. The petitioner has a problem. The problem of the petitioner has sprung from nowhere. The object of the sale is to get adequate market value of the property so that the proceeds of the sale is distributed amongst all the sharers without any dispute being there. In that light, no fault can be found with the order passed by the concerned Court directing the property to be put to sale on the strength of the report of the Commissioner.

17. Finding no merit in the petition, the petition stands ***rejected.***

Interim order of any kind subsisting, stands dissolved.

The concerned Court is directed to take this issue to its logical conclusion within eight weeks from the date of receipt of copy of the order.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

nvj
CT:MJ