

KATK030136862022



**IN THE COURT OF THE V ADDL. CIVIL JUDGE AND VI J.M.F.C
AT TUMAKURU.**

Dated: this the 4th day of August 2023.

**SMT. LAXMI BHAVANI SHANKRAPPA.,BBA.LLB(Hon's), LLM.,
V ADDL. CIVIL JUDGE AND JMFC,
TUMAKURU.**

FDP NO.33/2022

**PETITIONERS: SHIVALINGAMURTHY DEAD BY HIS LR'S
CHANDRASHEKAR AND OTHERS**

-Vs-

RESPONDENTS: RUDRAPPA AND OTHERS

PARTIES IN I.A.

**Applicant/ CHANDRASHEKAR
petitioner No.2:**

-vs-

**Opponents/: RUDRAPPA AND OTHERS
Respondents**

ORDER ON I.A. NO.II UNDER ORDER 26 RULE 13 R/W

SECTION 151 OF CPC

The petitioner No.2 has filed application U/O.26 Rule 13 of
CPC praying to appoint the Tumakuru Taluk Surveyor/ ADLR as

court commissioner to make partition and Separate possession of petition suit schedule properties.

2. In the accompanying affidavit annexed to the application it is stated that the petitioner has filed suit in O.S.No.1141/2008 against the defendants for partition and separate possession of my legitimate share in the suit property, the said suit was decreed and allotted 1/5th share in the suit properties as per judgment and decree passed by this court in O.S.No.1189/2011. The petitioner has filed this application seeking permission for measure and demarcate the suit schedule properties as per the decree through Taluk Surveyor attached to the ADLR, Tumakuru as court commissioner. On all these grounds, the petitioner prays to allow the I.A.

3. In this case, the respondents have appeared through their counsel but failed to file objection to main petition as well as this I.A.

4. Heard and perused I.A. affidavit and materials placed on record.

5. The following point arise for my consideration:

1) Whether the petitioner has made out sufficient and reasonable grounds to appoint commissioner ?

2) What order?

6. My answer to the above points as under:

Point No.1 : In the affirmative

**Point No.2: as per final order
for the following:**

Reasons

7. Point No.1 : The petitioner in his affidavit annexed to the I.A. has contended that plaintiff has filed suit against the defendants for partition and separate possession in respect of suit properties. The plaintiff has produced certified copy of Judgment in this petition. On perusal of said judgment, it reveals that the petitioner has got 1/5th legitimate share in the suit property as per judgment and decree passed in O.S.No.1141/2008. Moreover, the respondents have not produced any documents to show that they have challenged judgment and decree in O.S.No.1141/2008 passed by this court and there is no documents to show that this petition is stayed by the Appellate court.

8. Under these circumstances, this court opines to appoint court commissioner for demarcate the share of petitioner in the suit properties. Hence, this court is appointed the Taluka Surveyor attached to the ADLR office, Tumakuru Taluk is carving the partition in respect of suit properties. Therefore, in view of aforesaid reasons this court answers Point No.1 in the affirmative.

9. Point No.2: On the basis of above reasons, this court proceed to pass the following:

ORDER

The I.A. filed by the petitioner U/O.26 Rule 13 of CPC is hereby allowed.

The Taluka Surveyor attached to the ADLR Office Tumakuru Taluk is hereby appointed as Court Commissioner to demarcate 1/5th share of petitioner in the suit properties as per judgment and preliminary decree passed in O.S.No.1141/2008 and to submit the scheme of partition.

The court commissioner fee is tentatively fixed at Rs.2000/- .

Issue commissioner warrant accordingly if P.F. is paid and commissioner fee is deposited.

(Dictated to the Typist, directly on computer, print-out taken by her and then corrected, signed and pronounced by me in open court on this the 4th day of August 2023).

V Addl. Civil Judge & J.M.F.C.
Tumakuru.