

FDP.No.25022/2023

(i)	Provision under which the application is filed	Order 26 Rule 13 of CPC
(ii)	Relief sought for	Appointment of Court Commissioner
(iii)	The date on which the application is filed	04-09-2023
(iv)	Number of the application	IA No. 1
(v)	The date on which the objections are filed by different opponents	Objections Not filed
(vi)	The date on which the orders were passed on the said application	27-10-2023

ORDERS ON IA NO. 1

This is an application, under Order 26, Rule 13 of the CPC filed by petitioners for appointment of a court commissioner to ascertain the feasibility to divide the suit schedule property as per the shares allotted under the Preliminary decree.

2. The respondent No. 1 to 8 have entered appearance through counsel but have not filed objections either to the main petition or to present IA.

3. I have heard the learned counsel for petitioners on the present application. In spite of grant of sufficient opportunity, counsel for

respondents have not addressed arguments and arguments of respondents are taken as nil.

4. I have perused the records of the case.

5. The only point that arises for my consideration is :-

Whether IA No. 1 deserves to be allowed and court commissioner should be appointed as prayed for in IA No. 1?

6. My answer to the above point is in the **affirmative** for the following :-

REASONS

7. The facts in brief are that, the present FDP petition is filed to draw up the final decree in accordance with the preliminary decree dated 30-1-2023 passed by this court in O.S. 25468 of 2021. In the said suit, petitioner No. 1 and 2 herein were plaintiff No. 2 and 3 and Respondent No. 1 to 7 herein were defendant No. 1 to 7 in the suit and respondent No. 8 herein was plaintiff No. 1 in the said suit. By judgment dated 30-1-2023 the suit was disposed off at the stage of order 12, rule 6 of the CPC by partly declaring the suit and holding that plaintiff No. 1 to 3, defendant No. 1, defendant No. 2 to 4 together and defendant No. 5 to 7 together are each entitled to 1/6th share in suit schedule A property and also entitled to enquiry into accounts of the profits from suit schedule A property and the suit in respect of Suit Schedule B property was dismissed.

8. There is no contention raised by the respondents that any appeal is filed against the preliminary decree in OS 25468 of 2021 and that there is any stay of the same. Therefore, it is the duty of the court to proceed with the matter and partition the suit schedule A property in accordance with the preliminary decree. In order to partition the same, it is necessary to appoint a court commissioner to first ascertain whether suit schedule A property is capable of being divided into 6 shares and if so, to

demarcate the 6 shares, so that the same can be divided amongst the parties in accordance with the preliminary decree. Accordingly, in this case, it is necessary to appoint a court commissioner for the said purpose and accordingly, IA No. 1 deserves to be allowed and answering the point for consideration in the **affirmative**, I proceed to pass the following :-

ORDER

IA No. 1 filed by petitioners under Order 26, Rule 13 of the CPC is allowed and it is held that, it is necessary to appoint a court commissioner to submit report as to whether suit schedule A property [petition schedule property] is capable of being divided into 6 shares and if so, to prepare sketch dividing the suit schedule A property [petition schedule property] into 6 parts so that the same can be allotted amongst the parties in accordance with the preliminary decree.

For both sides to suggest name of the court commissioner and to file memo of instructions to the court commissioner call on 17-11-2023.

**Dt: 27/10/2023
XIII ACC&SJ.**

Crl. Misc. No. 25947 of 2023.

Although the matter is posted for orders, hearing is reopened for the following reason.

At the time of arguments, it was only submitted that the other accused in the present case have already been granted anticipatory bail. However, on perusal of the records, it is noted that, in Crl. Misc. No. 25927 of 2023, anticipatory bail has been granted to accused No. 2 and 3 of the present case principally on the ground that, there are no allegations against them as per the FIR and the allegation is only against accused No. 1 who is the present petitioner.

In this case, inter alia the allegations are that petitioner assaulted the first informant with key bunch resulting in damage to front teeth and requiring 10 stitches on the lips of the first informant and petitioner has also snatched away mobile phone platinum ring and spectacles of first informant and trying to extort money for returning of the same. Considering the nature of the allegations, in my view, it is necessary to obtain report of the IO as to up-to-date investigation done in the

present case and whether the articles of first informant have been recovered or yet to be recovered and also regarding nature of the injury sustained by the first informant.

Hence, for Learned PP to produce report of the IO as to whether the articles of First Informant stated in the FIR as having been snatched away have been recovered and also documents regarding nature of injury sustained by first informant, call on 30-10-2023.