KABC0A0021532023

IN THE COURT OF THE 74th ADDL. CITY CIVIL AND SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU. (CCH-75)

Dated: This the 12th day of June, 2024.

PRESENT:
Sri.PRAKASH CHANNAPPA KURABETT, B.Sc., LL.B.,(Spl.),
74th Addl. City Civil and Sessions Judge, Bengaluru.

FDP No.25015/2023

Petitioner:	Smt.Chandrakala.M.

(Rep.by Sri.KM, Advocate)

V/S

Respondents:	Smt.Manjula & others.

(Respts. No.1 to 6-Exparte)

PARITES IN IA No.I:

Applicant:	Smt.Chandrakala.M. - Petitioner.

V/S

Opponents:	*Smt.Manjula & others - Respondents.*

ORDERS ON IA No.I

This is an application filed u/O XXVI Rule 13 r/w Sec.151 of CPC seeking appointment of Court Commissioner to visit the schedule property and to give report whether it is feasible for division by metes and bounds for partition of the petitioner's share in the schedule property as per the preliminary decree passed in O.S. No.25595/2021.

2. *In the affidavit annexed to the application applicant/petitioner has sworn to the facts that she has filed the suit for the relief of partition in O.S. No.25595/2021 and same was decreed on 05.04.2023 by declaring that the petitioner entitled 1/5th share as per the preliminary decree in the suit schedule property.*

3. *Further the petitioner has sworn to the facts that till this day the respondents did not come forward to make partition as per the preliminary decree nor they produced*

any stay from the Hon'ble High Court of Karnataka. Hence seeking permission to appoint Court Commissioner to give report whether schedule property is feasible for division by metes and bounds for petitioner's share as per the preliminary decree to enable her to get her share. If a Court Commissioner is appointed, no prejudice will be caused to either of the parties. Hence, in order to adjudicate the matter, it is necessary to appoint a Court Commissioner. Accordingly, the applicant/petitioner has prayed for appointment of a Commissioner.

4. *After service of notice respondents not appeared before the court in person or through counsel. Therefore, they have been placed exparte.*

5. *Heard and perused the materials placed on record.*

6. *The point that would arise for my consideration is:*

> ***"Whether the appointment of Commissioner is necessary to adjudicate the matter effectively between the parties?"***

7. *My answer is* ***in the Affirmative****, for the following:-*

REASONS

8. *The petitioner has filed the suit for partition and allotment of 1/5th share to her in the suit property in metes and bounds and mesne proft in O.S. No.25595/2021 and same was decreed on 05.04.2023 by declaring that the petitioner entitled 1/5th share as per the preliminary decree in the schedule property. It is the contention of the petitioner that the respondents did not come forward to make partition as per the preliminary decree nor they produced any stay from the Hon'ble High Court of Karnataka on the preliminary decree. The records shows that the respondents not appeared before the court and they have been placed exparte. Hence, the appointment of Court Commissioner to effect partition in the schedule property and to enable petitioner to get her share as per the preliminary decree and to give report is necessary. In the facts and circumstances of the present case in hand, the appointment of Court*

Commissioner is very much necessary to adjudicate the matter effectively between the parties. Hence by considering no prejudice will be caused if a Commissioner as prayed by the petitioner is appointed and even otherwise in order adjudicate the matter effectively between the parties, it is necessary to appoint a Commissioner and as already the suit in O.S. No.25595/2021 was decreed on 05.04.2023 and the suit itself is for partition. Hence, to meet the ends of justice, I hold point for consideration ***in Affirmative*** *and proceed to pass the following:-*

ORDER

IA No.I filed by the petitioner u/O XXVI Rule 13 r/w Sec.151 of CPC is allowed.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the 12th day of June, 2024].

[PRAKASH CHANNAPPA KURABETT]
74th Addl. City Civil & Sessions Judge,
Mayohall, Bengaluru.