

**IN THE COURT OF THE LXXII ADDL. CITY CIVIL
& SESSIONS JUDGE AT MAYO HALL
BENGALURU, (CCH-73)**

Present:

Sri.Abdul-Rahiman. A. Nandgadi,
B.Com, LL.B., (Spl.)
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 11th day of March, 2022.

F.D.P.No.25011/2021

Petitioner:-

Smt. S. Hemalatha,
*W/o Sri. S. Nithyanand,
D/o Late G. Srinivasa Naidu,
Aged about 57 years,
R/at 3rd Cross, Indiranagar,
Opposite Old Panchayath Office,
Bidadi Town, Ramanagar Taluk,
Ramanagar District -562109.*

**[By Sri. Dase Gowda & S. Renuka-
Advocate]**

V/s

Respondents:

1. Smt. Mohana Kumari,
*W/o Sri. Muniswamy,
D/o Late G. Srinivasa Naidu,
Aged about 52 years,
R/at No.1,
Narayanaswamy Quarters,
Chinchukatta Main Road,*

Konnankunte Cross,
Kanakapura Main Road,
Bengaluru-560 062.
AND OTHERS.

[Exparte]

ORDER ON I.A.No.1/2022

The present application is filed by the Petitioner at IA No.1/2022 at U/Or. XXVI Rules 9 & 13 R/W Sec. 151 of the CPC, praying to appoint the Court Commissioner to allot the shares and to put the Petitioner and Respondents in their respective possession of the Suit Schedule 'A' Property.

2. *The Petitioner has sworn to an affidavit in support of the said application contending that, she has filed the present Petition for drawing of Final Decree, in pursuance of the Preliminary Decree passed in OS No.27336/2012 dtd.27.06.2019. Further contends that, the Respondents have complied with the Preliminary Decree. They are not cooperating in division of Suit Schedule 'A' Property by metes and bounds and allot respective shares with separate possession. She is constrained to file*

the present Petition and the present application to get appoint the Court Commissioner, in order to get division of the Suit Schedule 'A' Property; and to get allotted the separate possession. If the application is allowed no loss or prejudice will be caused to the Respondents. On the otherhand, she will be put to heavy and irreparable loss. Hence prayed to allow the said application.

3. *The Respondents are placed Exparte.*

4. *Heard the Arguments advanced by the Learned Counsel for the Petitioner.*

5. *The points that arise for my consideration are:*

1) Whether the Petitioner/ Applicant is entitled to get appointed an Advocate Court Commissioner, as sought for by her in the present application, to allot the share and to have separate possession in the Suit Schedule 'A' Property?

2) What order?

6. *My findings on the above points are as under:*

Point No.1 : Partly in the Affirmative

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

REASONS

7. Point No.1:-

It is seen that the Petitioner alongwith the Respondent No.1 had filed a suit at OS No.27336/2012 for the relief of Partition and separate Possession inrespect of Suit Schedule 'A and B' Properties. On full fledged Trial the said suit came to be decreed inpart, awarding 1/5th share each to the Plaintiffs and Defendant Nos.1 and 2 therein; and 1/5th share to the Defendant Nos.3 to 6, jointly. The suit of the Petitioner was dismissed inrespect of Suit Schedule 'B' Property.

8. *The Suit Schedule 'A' Property consist of Site No.21, formed in Sy No. 24/3 and Sy No. 35/2 situate at Halasuru Civil Station Bengaluru, measuring East to West: 27 feet + 26 feet 2 and North to South: 30 feet + 322 feet, with building consisting of ground floor and first floor, wherein there is one residential unit in the ground floor*

comprising of one hall, one bedroom, one kitchen and one bathroom; two commercial units in the eastern and western sides of the ground floor; and three separate residential units in the first floor, each unit comprising of one hall, one bedroom, one kitchen. Out of which one residential unit is having an attached bathroom and the other two residential units are having shared one common bathroom. The said property is bounded to the East: by Plot belonging to C Raju and K Rajamma; to the West: Road; to the North: Pipeline Road; and to the South: Plot No.20.

9. *As per the Preliminary Decree passed in OS No.27336/2012, five shares are to be worked out in the Scheduled Property, which was shown as Suit Schedule 'A' Property in the said suit.*

10. *For the sake of convenience Or.XXVI Rule 13 and 14 of CPC is read out as under:*

Rule 13 and Rule 14:

13. Commission to make partition of immovable property.-Where a Preliminary Decree for partition has been passed, the Court may, in any

case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner.-(1)

The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the

same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit”.

11. On considering the Arguments of the Learned Counsel for the Petitioner/Plaintiff No.1 and on going through the provision of law; and keeping in view, the law laid down by the Hon'ble Apex Court as well as the Hon'ble High Court of Karnataka, in order to give effect to the Preliminary Decree, it is just proper and necessary to appoint an Advocate Court Commissioner to visit the Schedule Property, to take note-off all the available situations in and on the said property, helpful for the divisibility of 1/5th share of the Petitioner and other sharers, as awarded to them as per the Preliminary Decree passed in O.S.No.25336/2012. Further, the Court Commissioner has to take note-off the possession, the feasibility and the convenient enjoyment of the sharers, over the Schedule Property, on its division. Further, if the Court Commissioner is of the opinion that the Schedule Property is indivisible, in its nature or if the proposed division of the Scheduled Property, will lead to inconvenience in enjoyment of the

property, the Court Commissioner has to take note-off the market value as well as the Government value of the Schedule Property as well as the 1/5th share, each of the sharers in order to press into service the Principles of Owelty, under the situation.

Further, the parties to this Petition have to give necessary Memorandum of Instructions to the Court Commissioner to have effective Commission Work. The Learned Advocate Court Commissioner has, to issue notice to the parties and to fix a date of his visit to the Schedule Property and on inspection of the Schedule Property, has to prepare a report about the proposed partition and submit the same to this court, inorder to have proper and complete adjudication of this case, within one month from the date of this order.

12. *Under the above circumstances, it is just, proper and necessary to allow the application of the Petitioner, and to appoint an Advocate Court Commissioner, to visit the Schedule Property and to propose Partition, as per the Preliminary Decree passed in O.S.No.27336/2012.*

13. *The Petitioner under the present Petition has sought for appointment of Court Commissioner to allot the sharers and put her in possession of the allotted share in the Scheduled Property.*

At present, though the Court Commissioner is required to be appointed, but the Court Commissioner is required to suggest feasibility of allotment of shares to the sharers, as per the terms of the Preliminary Decree, but the Court Commissioner cannot put any of the sharers in separate possession of the Proposed allotment of shares, in the Schedule Property. Allotment of shares and putting the sharers in separate possession of the allotted shares, will be pre-matured, at this stage.

So the application filed by the Petitioner is required to be allowed in part.

*Accordingly, I answer **Point No.1 Partly in the Affirmative.***

14. Point No.2:

For the forgoing reasons, I proceed to pass the following:

ORDER

I.A.No.1/2022 filed by the Petitioner U/Or.-XXVI Rule 9 and 13 R/w Sec. 151 CPC., is hereby Allowed, in part.

Consequently an Advocate Court Commissioner is appointed to visit the Scheduled Property and to submit the Proposal for feasible allotment of shares, of the sharers in the Schedule Property, as per the terms of Preliminary Decree passed in OS No.27336/2012.

The Petitioner has to suggest the name of an Advocate, for appointment as a Court Commissioner.

Advocate Court Commissioner's fee is fixed at Rs.5,000/- initially. Petitioner is directed to deposit the said Court Commissioner fees, in the office.

The Advocate Court Commissioner shall take into consideration the aspect of conducting the commission work, as observed in the body of this Order.

No order as to costs.

(Dictated to the Stenographer, transcribed by her and then corrected and pronounced in open court this the 11th day of March, 2022)

[Abdul-Rahiman. A.Nandgadi]
LXXII Addl.City Civil & Sessions
Judge, Bengaluru.(CCH-73)