

ORDERS ON I.A.No. 9

The applicant/petitioner have filed present application U/o 26 Rule 13 & 14 CPC sought for appoint of the commissioner by name Sri. Kiran Kumar.K, advocate and such other person like engineer in that behalf to divide the schedule property equally to the petitioner and respondent and submit his/her report and sketch by fixing meets and bounds and divide the schedule property and allot the 1/6th share of the petitioner by drawing final decree.

2. It contended in the affidavit annexed to the application that, the petitioner had the suit for partition and separate possession over the suit schedule properties. Wherein the suit the petitioner have claimed 1/6th share in the suit schedule property. This court was pleased to pass the preliminary decree with a direction to effect the partition and put her in separate possession of her 1/6th share in the suit schedule property. The petitioner and respondent No.5 have filed case in O.S.No.1145/2010 on 29/01/2011. This court after hearing the parties to the proceedings was pleased to decree the suit on 25/01/2011. As such appointment of court commissioner is very much necessary to divide the suit schedule property equally and to fix the meets and bounds of the suit schedule property. On the report of the court commissioner this court can effect the partition of the schedule property by drawing the final decree. The assistance of the court commissioner is very much necessary to divide and fix the boundaries by dividing the schedule property in to 1/6th share. Without of the court commissioner report and sketch this court cannot effectively draw the final decree. If the application not allowed she will be put to irreparable loss and injury. On the other hand if the application allowed no injury and loss would be caused to the respondents. On these grounds prayed for allowing the application.

3. Records reveal that, learned counsel for the respondent Smt. BS advocate submitted no objections to allowed I.A. No.9.

4. Heard and perused the material on record.

5. The point that arises for my consideration is;

Does I.A.9 filed by the petitioner deserves to be allowed ?

6. My answers to the above point is in the affirmative for the following;

:- REASONS :-

7. It is worth to note that, there is an preliminary decree dated 29/01/2011 in O.S.No.1145/2010 with respect to suit schedule properties. Further the same judgment and decree in O.S. No.1145/2010 have rest as unchallenged. Based on such preliminary decree the present petitioner sought for appointment of the court commissioner as to executed the decree and for drawn an final decree based on the commissioner's report. As could be seen from the records that though the respondent appeared through their counsel, the same respondent gave consent to allowed the application as per order sheet dated 01/02/2024. That since the respondent submitted that they have no objection to allowed the application and for effected the partition by meets and bounds the application of the applicant very much proper. Further as to effect the preliminary decree it very necessary to demarcate the petitioner's legal share in the schedule property to extent of her 1/6th share and to put her in to the possession.

8. Therefore having regard to facts and circumstances of the case, in order to effect partition of the immovable property, the report of the court commissioner is necessary, accordingly I.A.9 deserves to be allowed without cost. Hence I answer the point raised for consideration in the affirmative and proceed to pass the following:-

ORDER

I.A. No.9 filed U/o 26 Rule 13 and 14 CPC by the applicant/petitioner hereby allowed.

The court commissioner fee fixed at the rate of Rs.5,000/- tentatively.

To suggest the name of court commissioner call on 02/08/2024.

(ONKARAPPA.R)
V ADDL.CITY CIVIL & SESSIONS JUDGE
BANGALORE