

KABG040005922022



04.01.2025

FDP No.9/2022

**ORDERS ON I.A.NO.I
FILED U/SEC.54 OF C.P.C.**

The petitioner has filed I.A.No.I U/Sec.54 of C.P.C., to appoint A.D.L.R. Taluka Surveyor as Court commissioner for division of suit schedule property as per preliminary decree.

2. In the affidavit annexed to the application, it is stated that in the original suit for partition and separate possession, decree has been passed and now the share of the plaintiff/petitioner has to be allotted, hence the application has to be allowed in the interest of justice.

3. Per contra, the respondents have not filed any objection to I.A.No.I. But, the respondent No.1 has filed objection to the main petition and contended that she has preferred appeal against the Judgment dated 30.12.2021 and that the suit is bad for partial partition since all the joint family properties are not included and further that the Will executed by her mother Marubai has not been considered at the time of passing of preliminary decree.

4. Perused the application and objection.

5. Heard arguments of learned counsel for petitioner. The counsel for respondents did not address arguments despite sufficient opportunity being given.

6. The following points arise for my consideration.

i) Whether the petitioner has made out sufficient grounds to allow I.A.No.I filed U/Sec.54 of C.P.C. ?

ii) What order ?

7. My findings to the above points are as follows :

Point No.1 : In the Affirmative.

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

REASONS

8. **Point No.1 :** The petitioner herein is the plaintiff in O.S.No.1340/2012 wherein she was held entitled to 1/3rd share in the suit schedule property. Now the plaintiff who is present petitioner has filed this petition against the defendants/respondents and the present application is filed seeking appointment of Court commissioner for the purpose of allotment of share of plaintiff/petitioner as per the decree.

9. Though the respondent No.1 has contended that she has preferred appeal against the said Judgment, the said appeal has been disposed of in R.A.No.50/2022 by Hon'ble Prl. Senior Civil Judge & CJM, Belagavi, wherein the Judgment and Decree of this Court came to be confirmed. The Appellate

Court has elaborately discussed about the alleged Will said to have been executed by Marubai and it is also held that the other properties which according to respondent No.1 were not included in this suit, need not be included since the said suit was filed by the plaintiff for partition in respect of property inherited through her mother and not in respect of joint family properties of plaintiff and defendants. Hence, this Court need not again ascertain the said issues. Hence, in view of the preliminary decree passed in O.S. No.1340/2012 wherein it is held that the plaintiff/petitioner herein is entitled to 1/3rd share in suit property i.e., agricultural land bearing R.S.No.52/B (old R.S.No.52) measuring 2 Acres 30 Guntas, situated at Boknur Village, Uchagaon, Belagavi, it is very much necessary to appoint Court commissioner calling for suggestion with respect to the scheme of partition. Hence, I answer **Point No.1 in the Affirmative.**

10. Point No.2 : For the aforesaid reasons, I proceed to pass the following :

ORDER

I.A.No.I filed by the petitioner U/Sec.54 of C.P.C. is hereby allowed.

The surveyor attached to A.D.L.R. Office, Belagavi is hereby appointed as Court commissioner and he is requested to suggest the scheme of partition in accordance with the terms of preliminary decree dated 10.12.2021 and as per Judgment dated 30.11.2021 wherein it is held that the petitioner herein is entitled to 1/3rd share in the suit schedule property, respondent No.1 is entitled to 1/3rd share and respondents No.2 to 6 are together entitled to 1/3rd share in the suit property.

The Court commissioner shall submit his report along with hand sketch and map disclosing measurement of suit schedule property and suggesting the scheme of partition as per preliminary decree.

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The commissioner fee is fixed at Rs.2,000/- to be borne by the petitioner.

The Court commissioner fee is to be deposited in C.C.D. within a week from the date of this order.

Issue commissioner warrant.

Returnable by 01.02.2025.

**Prl. Civil Judge and J.M.F.C,
Belagavi.**