

The respondents and their counsels are absent. No representation on behalf of respondents. Hence objections of the respondents to IA.No.4 is taken as not filed.

Heard.

**ORDERS ON I.A.No.4 FILED BY THE  
PETITIONERS U/O.XXVI R.13 R/w. 151 OF  
CPC**

The petitioners have filed this application U/O.XXVI R.13 r/w Sec.151 of C.P.C and pray this Court to appoint the Tahasildar/surveyor, Hiriyur as Court Commissioner to divide the decree schedule properties by metes and bounds, as per preliminary decree.

2. In spite of granting sufficient time, the respondents have not filed their objections to I.A. No.4. Hence, their objections to this application is taken as not filed.

3. I have heard Smt. M.M Advocate on this application.

4. The petitioners had filed O.S.No.22/2011 seeking the relief of partition and separate possession of their share in the

suit schedule properties by metes and bounds. On enquiry this Court passed judgment on 12.10.2017 and thereby decreed the suit of the plaintiffs in part holding that, the plaintiff No.1 and defendant No.11 are entitled to  $7/72^{\text{nd}}$  share each, the plaintiff No.3 to 5 are jointly entitled to  $7/72^{\text{nd}}$  share, the plaintiff No.8 is entitled  $5/36^{\text{th}}$  share and the plaintiff No.6 and 7 are entitled to  $1/36^{\text{th}}$  share each in the suit schedule properties by metes and bounds.

5. The petitioner No.1 to 6 herein were the plaintiffs, the petitioner No.7 was the defendant No.12 & respondents were the defendants in the original suit. As per the preliminary decree, the respective petitioners are entitled to share in the decree schedule properties.

6. As per the preliminary decree item No.1 ,2 and 4 properties are situated at Madenahally village and item No.3 property is situated at Dindavara village, J.G Hally hobli, Hiriyyur Taluk. All the properties are agricultural lands. On the basis of the preliminary decree passed by this Court in

O.S.No.22/2011, the petitioners have filed this final decree petition to draw final decree to get allotted their shares in the decree schedule properties.

7. In order to draw final decree, the report of the Court commissioner is must. In order to divide decree schedule properties by metes and bounds, it is just and proper to appoint a competent person as Court Commissioner. So that, the Court Commissioner shall hold local inspection of the properties, measure them, value it and divide the same as per the preliminary decree passed by this Court.

8. The report of the Court Commissioner will assist the Court in drawing the final decree. The petitioners prayed the Court to appoint Tahasildar or surveyor as Court Commissioner. But, the Tahasildar will be burdened with his own administrative work. In such circumstances, it is just & proper to appoint the taluk surveyor attached to the office of Tahasildar, Hiriyr as Court commissioner so as to enable the Court to draw final decree. By considering all these aspects, I proceed to pass the following:

## **ORDER**

I.A.No.4 filed by the petitioners U/O.XXVI R.13 R/w Sec. 151 of C.P.C is allowed.

Taluk surveyor attached to the office of Tahasildar, Hiriyur is appointed as Court commissioner to effect partition of schedule properties by metes and bounds, as per the preliminary decree.

He shall visit the decree schedule properties, measure them, value the same and divide them by metes and bounds as per the preliminary decree and submit his report to the Court regarding proposal of allotment of shares to the respective parties.

He shall execute the warrant by giving prior notices to the parties.

Court Commissioner's fee is fixed at Rs.2,500/-.

Office to issue commission warrant to the Court Commissioner if P.F and Court Commissioner's fee are deposited.

After the execution of the Commission Warrant, he shall submit his report to this Court as early as possible.

Call on 08.06.2022.

Senior Civil Judge & JMFC,  
Hiriyur