

### **ORDERS ON IA.NO.II & III**

The IA.No.2 is filed by the petitioner U/O.XXVI R.13 of CPC to appoint taluka surveyor as Court commissioner to demarcate the share of the petitioners as per preliminary decree passed in OS.No.98/2006 on the file of this Court.

2. The IA.No.3 is filed by the respondents U/O. XX R.18 r/w Sec.151 of CPC to pass preliminary decree by allotting 1/5th share to respondent No.1 to 4 together, 1/5th share each to respondent No.5 to 7 and 1/5th together to respondent No.8(a) to 8(f).

3. The respondents have contended that, at the time of passing of preliminary decree by this Court in OS.No.98/2006 their interest has been ignored over the subject matter of the suit. Therefore, they have submitted that, they are ready to pay requisite Court fee to engross their shares.

4. The respective parties have filed objections to IA.No.2 and 3, thereby the respondents have submitted that, the application filed by

petitioner is not maintainable since they are also entitled for equal legitimate of share in schedule properties.

5. The petitioners by filing objections to IA.No.3 have submitted that, the respondents have to approach the competent Court of law to declare their shares in accordance with law. But they have no right to file this application before this Court to declare their shares. Hence, they have prayed to reject the application.

6. The following points arise for my determination.

1. Whether the petitioners satisfied that the Court commissioner is to be appointed?
2. Whether the respondents satisfied that they too entitled for legitimate shares in schedule properties?
3. What order?

7. I have heard from both sides and perused the available materials, my findings to the above points are as under:

Point No.1: Affirmative

Point No.2: Affirmative

Point No.3: Both application  
allowed for the following:

### **REASONS**

**Point No.1 & 2:** These two points are interconnected each other as such taken together for common discussion.

8. On perusal of the judgment and decree passed in OS.No.98/2006 dated:30.08.2008, it is crystal clear that, Late. Jogeerappa S/o. Erajja had 5 sons, and they are the petitioner and respondents herein. The defendants though appeared in that suit through advocate, but they have not filed the written statement. Ultimately my predecessor decreed the suit by declaring share of petitioners only.

9. It is well settled law that, in a suit for partition and separate possession the Court has to declare shares of all the state holders i.e., sharers. Admittedly the 5 sons of Jogeerappa were entitled for 1/5th share each. The respondent No.1 to 4 being the sons of Eranna one of the son of Jogirappa together having 1/5th share. The respondent

No.5 to 7 each is entitled for 1/5th share and legal heirs of respondent No.8 i.e., respondent No.8(a) to 8(f) they are also entitled for 1/5th share together. Therefore, there is no bar to pass another preliminary decree by declaring the 1/5th shares of respondents as discussed above.

10. It is also well settled law that, before passing final decree, a Civil Court can pass any number of preliminary decrees which in depend upon facts and circumstances of a particular case. As mentioned above though the respondents were parties in the original suit but their shares were not declared. However as per law they are entitled for 1/5th share. Since, they are prepared to pay the requisite Court fee, as such the application filed by them is deserves to be allowed.

11. As regards the appointment of Court commissioner, the learned counsel for respondents said no objections to allow the same. Provided the shares of the respondents are declared. In view of above discussion now it is crystal clear that in order to execute

preliminary decree in respect of landed properties the appointment of ADLR, Hiriyr as Court commissioner is necessary. Hence I answer the above points No.1 and 2 in affirmative.

**12. Point No.3:** I proceed to pass the following:

### **ORDER**

I.A.No.2 & 3 filed by the petitioner and respondents U/O.XXVI R.13 & U/O. XX R. 18 of C.P.C respectively are allowed.

Thereby it is declared that, respondent No.1 to 4 together entitled for 1/5th share, the respondent No.5 to 7 each is entitled for 1/5th share and respondent No.8(a) to 8(f) together entitled for 1/5th share in petition schedule properties by partition by metes and bounds.

The respondents is hereby directed to pay requisite Court fee to engross their shares as per law.

Since the shares of the respondents declared as such the CMO is directed to

add the following sentences in the preliminary decree passed in OS.No.98/2006 on the file of this Court.

**It is declared that, respondent No.1 to 4 (defendant NO.1 to 4) together entitled for 1/5th share, the respondent No.5 to 7 (i.e., defendant No.5 to 7) each is entitled for 1/5th share and respondent No.8(a) to 8(f) (deceased defendant No.8) together entitled for 1/5th share in schedule properties by partition by metes and bounds.**

The ADLR, Hiriya is appointed as the court commissioner to demarcate the shares of the respective parties as per the preliminary decree passed in OS.No.98/2006.

For compliance by 10.06.2022.

Senior Civil Judge & JMFC,  
Hiriya