

ORDERS ON I.A.No.1 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 Taluk surveyor, Hiriyur as Court Commissioner to make division of the petition schedule properties as per the preliminary decree.

2. Inspite of giving sufficient time, the respondents have not filed their objections to I.A. No.1. Hence, the objections of respondent No.1 to 6 to IA.No.1 is taken as not filed.

3. I have heard Sri. M.V on this application.

4. The plaintiffs had filed O.S.No.10/2014 on the file of this Court seeking the relief of partition and separate possession of their share in the suit schedule properties. On enquiry this Court passed judgment on 20.10.2020 and thereby dismissed the suit of the plaintiff with costs and allowed the counter claim filed by the defendant No.4 to 6 holding that, the plaintiff, defendant No.1 to 7 are entitled to

1/8th share each in item No.2, 11 to 13 schedule properties by metes and bounds.

5. The petitioners herein were defendant No.4 to 6, the respondent No.1 was the plaintiff, respondent No.2 to 6 were other defendants in the original suit. As per the preliminary decree the petitioners being defendant No.4 to 6 are entitled for 1/8th share each in item No.2, 11 to 13 properties only.

6. From the contents of the decree, it appears that, item No.2 and 11 properties are agricultural lands, which are situated at Hiremadhurai, Challakere Taluk. Item No.12 is a house property, which is situated at Jodipura village, Hiriya. Item No.13 is a site, which is situated at Sondekere Village, Hiriya.

7. On the basis of the preliminary decree passed by this Court in O.S.No.10/2014, the petitioners have filed this final decree petition to draw final decree and allot their shares in the decree schedule properties.

8. In order to draw final decree, the report of the Court commissioner is must. As per the preliminary decree, suit schedule properties

are agricultural lands, house and site properties, which have to be divided by metes and bounds. In order to divide the 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.

9. The report of the Court Commissioner will assist the Court in drawing the final decree. The petitioner prayed the Court to appoint taluk surveyor as Court Commissioner. But, item No.2 and 11 properties are situated at Hiremadurai village, Challakere taluk, Chitradurga. In such circumstances, it is just & proper to appoint the taluk surveyor attached to the office of Tahasildar, Challakere as Court commissioner to divide item No.2 and 11 properties and appoint an engineer of PWD Hiriur as Court commissioner to divide item No.12 and 13 properties, 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.1 filed by the petitioners U/O.XXVI R.13 of C.P.C is partly allowed.

Taluk surveyor attached to the office of Tahasildar, Challakere is appointed as Court commissioner to effect partition of item No.1 and 11 schedule properties by metes and bounds.

An engineer of PWD, Hiriya is appointed as Court commissioner to effect partition of item No.12 and 13 properties by metes and bounds.

They 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 their report to the Court regarding proposal of allotment of shares to the respective parties.

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

Court Commissioner's fee is fixed at Rs.2,500/- each. Office to issue commission warrants to the Court Commissioners' if P.F. and Court Commissioners' fee is deposited.

After the execution of the Commission Warrants, they shall submit their reports to this Court as early as possible. Call on : 10.06.2022.

Senior Civil Judge & JMFC,
Hiriyur