

**ORDERS ON I.A.No.V**

The present application is filed by the petitioners under Order 26 Rule 9 R/w Section 151 of C.P.C. seeking appointment of Taluk Surveyor to demarcate the schedule properties as per the preliminary decree passed in OS No.111/2006 dated 16.02.2010 which was modified by the Hon'ble District and Sessions Judge at Chitradurga in RA No.40/2010 dated 20.04.2011. The application is supported with the affidavit of the petitioner No.1(b).

**2.** The learned counsel for the respondents have submitted no objections to the application.

**3.** Heard arguments. Perused records.

**4.** The present petition is filed under Order 20 Rule 18 R/w Section 54 of CPC for drawing up of final decree as per judgment and decree passed by this court in OS No.111/2006 dated 16.02.2010 and which was modified by the Hon'ble District and Sessions Judge, Chitradurga in RA No.40/2010. The present petitioner No.1(a) to 1(d) are the legal heirs of the deceased defendant No.2 in O.S.No.111/2006.

The respondent No.1 to 4 are the defendant No.1, plaintiff, defendant No.3 and defendant No.4 in O.S.No.111/2006. This court by its judgment dated 16.02.2010 was please to decree the suit of the plaintiffs holding that the plaintiff is entitled for 1/4th share in the suit schedule properties. Against the said judgment, the defendant No.1, 3 and 4 i.e. is the present respondent Nos.1,3 and 4 had preferred an appeal before the court of Hon'ble Addl. District and MACT (Fast Track Judge), Chitradurga in RA No.40/2010. The said appeal was allowed in part and the shares of the parties were modified. As per the said judgment the plaintiff/respondent No.2 Honnappa is entitled to 6/25<sup>th</sup> share in the suit schedule properties. The defendant No.1/respondent No.1, defendant No.2/petitioner and defendant No.4/respondent No.4 are held entitled to 6/25<sup>th</sup> share each in the suit schedule properties. The defendant No.3/ respondent No.3 is held entitled to 1/25th share in the suit schedule properties. The said judgment of Hon'ble Appellate court appears to have attained finality as no materials are placed on record to show that any appeal is preferred against the said judgment.

5. During the pendency of the petition, the petitioner/ defendant No.2 was reported to be dead and his legal heirs i.e. petitioner No.1(a) to 1(d) were brought on record.

6. As per the modified judgment, the petitioner No.1(a) to 1(d) are collectively entitled for 6/25<sup>th</sup> share in the suit schedule properties. The respondent No.1, 2 and 4 are entitled to 6/25<sup>th</sup> share each in the suit schedule properties. The respondent No.3 is entitled for 1/25<sup>th</sup> share.

7. It appears that in spite of the order, the share of the plaintiff has not been handed over to him. As such appointment of court commissioner is necessary, so as to enable the parties to enjoy the fruits of decree passed in their favour. Thus for these reasons this court is of the considered opinion that the application filed by the petitioner deserves to be allowed. In the light of foregoing discussions, this court proceeds to pass the following

**O R D E R**

I.A.No.5 filed by the petitioners under Order 26 Rule 9 R/w Section 151 of CPC is hereby allowed.

The Taluka Surveyor, Challakere is hereby appointed as court commissioner, to divide the suit schedule properties as per the judgment and decree passed by Hon'ble Addl. District and MACT (Fast Track Judge), Chitradurga in RA No.40/2010 dated 20.04.2011. That is 6/25<sup>th</sup> share each in favour of the petitioner Nos.1(a) to 1(d), respondent Nos.1, 2 and 4 and 1/25th share in favour of the respondent No.3.

The commissioner fee to the aforesaid surveyor is tentatively fixed at **Rs.3,000/-**.

The petitioners are hereby directed to deposit the commissioner's fee within a period of 14 days.

Further both parties are directed to furnish memo of instructions, if any,

*in terms of decree passed in RA  
No.40/2010, within a period of  
14 days.*

*Office to issue commissioner  
warrant accordingly.*

*Await commissioner report by  
21.07.2025*

Senior Civil Judge and JMFC,  
Challakere.