

ORDER

The petitioner filed instant petition to pass final decree as per the judgement and decree of O.S.No.35/2017 on the file of Prl.Sr.Civil Judge and CJM at Chickkamagaluru.

2. On the contrary the respondent No.1 filed objection and submitted that respondent No.1 had filed RFA before Hon'ble High Court of Karnataka, Bangalore against the impugned judgment and decree. In the said the appeal, appellant has also sought for stay of execution and operation of judgement and decree. If Hon'ble High set-aside the impugned judgment and decree of lower court on the basis of which FDP is filed then entire FDP proceedings will become infructuous. Hence, prays to dismiss the petition.

3. On perusal of entire materials on record, I find that, the instant petition is filed to pass final decree in view of preliminary decree in O.S.No.35/2017 on the file of Hon'ble Prl.Sr.Civil Judge and CJM, Chickkamagaluru, wherein it is claimed that 1/6th share in the schedule property. The Hon'ble court has decreed granting 1/6th share to petitioner in item No1 coffee land and item No.2 house and commercial building. The respondents have not divided the property by metes and bounds despite the decree. Hence, the instant petition is filed.

4. But contention of respondent that he had filed RFA before Hon'ble High Court of Karnatka, Bangalore and Hon'ble High court may set-aside the decree of lower court. But respondent No.1 has not furnished any documents to substantiate that he has preferred

RFA before Ho'nble High Court of Karnataka. In the absence of materials the court cannot rely upon the defense of respondent No.1. If there is stay order by Hon'ble High Court of Karnataka then this court would oblize the order of Hon'ble High Court of Karnataka. If the petition is dismissed at this juncture petitioner would be put in to a greater hardship. Moreover, he would be deprived from getting fruits of preliminary decree in O.S.No.35/2017. Therefore, I hereby proceed to pass the following:

ORDER

The objection which is filed by respondent No.1 is hereby dismissed/rejected.

The petition will be adjourned for further steps.

Sd/-

II ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
CHICKKAMAGALUR.