

**COMMON ORDER ON.VI**

The counsel for defendant has filed I.A.No.VI under Sec.151 of CPC seeking permission to file the objection to

commissioner report along with objection to commissioner report.

2. In the accompanying memorandum of fact the defendant has stated that, the commissioner has filed the commissioner report by measuring the property. The counsel for defendant by oversight and by mistake has submitted before this court as they have no objection to commissioner report. While going through the commissioner report the counsel came to know that, the surveyor not properly measured the property and shown more extent instead of existing possession of defendants. Hence, they intending to file objection to the commissioner report. If the present application is not allowed the defendant will be put to untold hardship and prayed permission to file objection to commissioner report.

3. Per contra, the counsel for plaintiff has filed objection to IA No.VI stating that, the defendant has not come before this court with clean hands and filed the

present application with an intention mislead the court. The present application is filed to harass the plaintiff. If the present application is not allowed no hardship will be caused to the defendant. Hence, prayed to reject the application.

4. Heard on the application. Perused the materials available on record the present case is filed by the plaintiff seeking the relief of partition and the court commissioner has been appointed by this court as per its order dated 30.07.2019 and the commissioner had filed his report before this court on 04.10.2023 this court has posted the case for objection to commissioner report. Later, counsel for plaintiff submitted no objection to commissioner report. The counsel for defendant Nos. 4 to 8 by taking adjournment to file objection has submitted before this court on 14.12.2023 as he has no objection to commissioner report. Later, again on 08.01.2024 the counsel for defendant No.4 to 8 has filed this present IA.

5. It is the contention of the defendant that, the commissioner had not measured the property properly and the commissioner has shown extra extent of property and they have objection to the commissioner report. Hence, if the opportunity has not been granted to the defendant to file objection it will cause injustice to him. Hence, this court is of opinion that, an opportunity has to be given to the defendant to file objection for proper adjudication of the matter. Therefore, it is just and necessary to allow this application in the interest of justice and to avoid multiplicity of proceedings.

6. Hence, I proceed to pass the following;

### **ORDER**

The I.A.No.VI filed by the defendant U/Sec. 151 of C.P.C is hereby allowed on cost of Rs.100/-. The objection filed by the defendant to commissioner report is taken on record.

For hearing on commissioner  
report by 03.04.2024.

**Sd/-**

**1<sup>st</sup> ACJ & JMFC, Kadur.**