

**IN THE COURT OF THE PRL CIVIL JUDGE AND
JMFC AT KADUR**

Present: Smt.Anitha, B.A. (Law) L.L.B,
Prl. Civil Judge & JMFC.
Kadur

Dated this the 21st day of August, 2017

F.D.P. No.23/2015

Petitioner: V.S. Bhagya D/o Somanna,
aged about 39 years,
Agriculturist, R/at Vaderahally
village, Kunkanadu Post,
Yagati Hobli, Kadur Taluk.

(By: Sri K.P. Neelakantappa, Advocate)

V/s

Respondents: Somanna S/o Sadappa, **(dead)**

1. Kumarappa S/o Somanna,
aged about 37 years,
2. Smt. Thoyijakshamma,
D/o Somanna, aged 59 years,
3. Smt. Parvathamma,
D/o Somanna, aged 57 years,
4. Smt. Prabhavathi, D/o Somanna,
aged about 55 years,
5. Sakamma D/o Somanna,
aged about 34 years,
All are residing at Vaderahally
village, Kunkanadu Post,
Yagati Hobli, Kadur Taluk.

**(Respondent No.1 by Sri A.S. Narasimha
Bharathi, Advocate, respondent No.2 & 4
by Sri N.N. Vasanthakumar, Advocate,
respondent No.3 and 5 Placed Exparte)**

ORDERS PASSED ON IA No.I

Learned counsel for the petitioner filed the present application under Section 54 of CPC to appoint the Tahasildar, Kadur Taluk and Assistant Executive Engineer, PWD., Kadur as court commissioners to carve out the share of properties as per the preliminary decree passed in OS No.295/2011.

2. The application is supported with the affidavit of the petitioner stating that, she has filed OS No.295/2011 for the relief of partition and separate possession. This court has decreed the suit and preliminary decree has been passed. The suit schedule properties are the landed properties and house property and Tahasildar, Kadur Taluk and Assistant Executive Engineer, PWD., Kadur are the proper persons to carve out the share of properties as per preliminary decree. Hence, it is just and necessary to appoint them as court commissioners and she is ready to pay the costs. Hence, prayed to allow the application.

3. The application is opposed by learned counsel for the 2nd respondent by filing the objection stating that, the application is not maintainable

under law or on facts. The 2nd respondent has preferred an appeal in RA No.69/2015 against the judgment and decree passed by this court in OS No.295/2011 and the said appeal is pending before the Hon'ble Senior Civil Judge, Kadur. If the share of the properties are carved out as per preliminary decree, it would lead to multiplicity of proceedings. If the application is allowed, the 2nd respondent will suffer irreparable loss and mental agony. Hence, prayed to reject the application.

4. Thereafter, heard arguments advanced by learned counsel for the petitioner and learned counsel for the 2nd respondent and perused the case papers. After hearing the arguments and on perusal of the entire case papers the points that arise for consideration are as hereunder:

POINTS

1. Whether the petitioner has made out sufficient grounds to appoint the court commissioners in order to carve out the shares?
2. What Order?

5. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:** This is the petition filed by the petitioner under Section 54 of CPC seeking final decree in respect of the petition schedule properties as per the preliminary decree passed in OS No.295/2011. The certified copy of the decree passed by this court in OS No.295/2011 is also produced by the petitioner. As per the said decree, the petitioner herein has filed a suit in OS No.295/2011 against the respondents herein for the relief of partition and separate possession of her share. As per the preliminary decree, it was ordered that the petitioner is entitled for 1/6th share in the suit schedule properties and defendants No.2 to 6 are equally entitled for 1/6th share each in the suit schedule properties. As such, this petition came to be filed.

7. I.A. No.I is filed under Section 54 of CPC to appoint the Tahasildar, Kadur Taluk and Assistant Executive Engineer, PWD., Kadur as court commissioners to demarcate the shares of the parties. As per the preliminary decree item No.1 to 3 and item No.5 to 7 properties are the landed properties and item No.4 is the house property. As per Section 54 of CPC the Tahasildhar is a proper person to effect partition in respect of landed properties. Since, item No.4 property is a house property, the Assistant Executive Engineer, PWD., Kadur is the proper person to demarcate the share.

8. In the objection the 2nd respondent has stated that, he has preferred an appeal against the judgment and decree passed by this court in RA No.69/2015. But the 2nd respondent has not produced any documents to show that, there is any stay in the said appeal. Mere filing of an appeal is not sufficient to stop from proceeding further. Further, mere appointment of court commissioners to carve out the share will not defeat the rights of the 2nd respondent. Hence, this court comes to the conclusion that the petitioner has made out sufficient grounds to allow the application.

Accordingly, point No.1 is answered in the Affirmative.

9. **Point No.2:** In view of the discussions made above this court proceeds to pass the following:

ORDER

I.A.No.I filed by the petitioner under Section 54 of CPC is hereby allowed.

The Tahasildhar, Kadur Taluk is hereby appointed as court commissioner to demarcate the share as per preliminary decree in OS No.295/2011 in respect of item No.1 to 3 and item No.5 to 7 of the petition schedule properties.

The Assistant Executive Engineer, PWD., Kadur is hereby appointed as court commissioner to demarcate the share of the parties in respect of item No.4 property as per the preliminary decree in OS No.295/2011.

The court commissioner fee is tentatively fixed at Rs.1,500/- each.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 21st day of August, 2017.)

Sd/-
(Anitha)
Prl.Civil Judge and MFC.,
Kadur.