

ORDER ON COMMISSIONER REPORT

The court commissioner has submitted the reports effecting partition as per the preliminary decree in RSA.No.1090/2020 passed by the Hon'ble High Court of Karnataka. The petitioner has filed objection to the commission report by stating that the court commissioner instead of allotting share to petitioner in petition schedule item NO.9 to 12 as per memo of instructions filed, erred in allotting 4/27th and 3/27th share to petitioner in Sy.No.188/1, 189/2, 425/5, 425/4, 425/3, 427/4A, 414/2, 78/1p(78/7), 70/3, 41/2 and 27/2. The petitioner further stated that as per the order in R.A.70/2017 the Hon'ble Prl. District and Sessions Judge held that in item No.12 i.e., Sy.No.101/1 petitioner and respondents are having shares. The said property is not considered at the time of measurement.

The petitioner further stated that as per order in R.A.70/2017 it has been held that pertaining to item No.1 and 2 equitable relief is to be given to the purchaser of the said property from the share of respondent No.1 and 2. If equitable relief is granted to respondent No.3 in item No.1 and 2 then

allotting share to petitioner in item No.1 and 2 has to be ignored. In the original side the plaintiffs/petitioners were allotted with 1/3rd share, respondent No.1 and 2 were allotted with 1/3rd share each in item No.1 to 11. In R.A.70/2017 order has been passed to the affect that the petitioner No.1 and 2 together and respondents No.1 and 2 are having 1/3rd share in item No.1 to 11 and also item No.12. Later in petition item No.12 is added. In RSA.1090/2020 the Hon'ble High Court of Karnataka held that susheelamma is having share in the properties allotted to the share of petitioners being the legal heirs of Santhosh and it has been held that 1st petitioner is entitled for 4/27th share, 2nd petitioner is entitled for 3/27th share, 1st respondent entitled for 10/27th share and 2nd respondent is entitled for 10/27th share. The petitioner stated that total extent of item No.1 to 12 excluding kharab is 368 guntas as per the High court order petitioners are together entitled for 96 guntas, respondent No.1 is entitled for 136 guntas and respondent No.2 is entitled for 136 guntas. Since equitable reliefs is given pertaining to item No.1 and 2 to respondent No.3 and item No.1 and 2 being

the valuable property than other properties petitioners be together allotted with 96 guntas of land in item No.8 and item No.10 and item No.11 and rest of the properties which measures 272 guntas be allotted to the share of respondent No.1 and 2 and in that share respondent No.3 can retain item No.1 and 2 for having purchased item No.1 and 2 from respondents 1 and 2 and rest extent be allotted to respondents No.1 and 2. Hence petitioners prays to reject the commissioner report and prays to reissue commissioner warrant to allot 96 guntas of land i.e., the share of petitioners in item No.4, 10 and 11.

The respondents were not filed any objection to the commissioner report. In the present case petitioner has filed I.A.No.10 to amend the petition and permit petitioner to include item No.12 in the schedule. The respondents submitted that they have no objection to allow the amendment application. Hence the I.A.No.10 filed by petitioner for amendment of the petition to add the item No.12 of the petition schedule property has been allowed by this court. It is to be noted that in R.A.70/2017 the Hon'ble Prl. District and Sessions Court observed that the

appellant No.1 and 2 each are entitled for 1/3rd share and respondent No.1 and 2 are together entitled for 1/3rd share in Sy.No.101/1 measuring 0.16 guntas (including 0.02 guntas of kharab land of Joganakere Village). The Hon'ble High Court of Karnataka in RSA.1090/2020 in para No.16 observed that plaintiff No.1 and 2 have not filed any appeal against said finding and hence the Hon'ble High Court of Karnataka clear that the suit schedule properties as well as the claim of defendants is that other property bearing No.101/1 to the extent 16 guntas is also a joint family property and to that affect now there is no dispute. Since the judgment of Hon'ble High Court of Karnataka in RSA.1090/2020 is not challenged by the parties. The item No.12 of the petition schedule property has to be divided as per the judgment in R.A.70/2017. But the court commissioner has not considered the item No.12 of the suit schedule property while demarcating the properties. Therefore only for the limit purpose the commission warrant has to be reissued to the court commissioner to divide the item No.12 of the petition schedule property in accordance with the judgment in

R.A.70/2017. Hence I proceed to pass the following;

ORDER

Issue Commissioner warrant to the court commissioner only to demarcate the item No.12 of the petition schedule property in accordance with the Judgment in R.A.70/2017 if P.F paid by petitioner.

Call on 08.11.2024.

***(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.***