

KACM510000632023



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 07th day of March 2024

FDP.No.01/2023

BETWEEN:

Smt.Rathnamathi and others

...Petitioners

V/s.

AND:

Mr. Sanjeeva Poojari

...Respondent

IA.No.I

BETWEEN:

Smt.Rathnamathi and others

...Applicants/Petitioners.

V/s.

AND:

Mr. Sanjeeva Poojari

...Opponents/Respondent.



ORDERS PASSED ON IA No.I

Learned counsel for the applicants/ Petitioners filed present application under Order XXVI Rule 13 and 14 R/w Section 151 of CPC to appoint ADLR Koppa or such other competent person as Court Commissioner to effect division of the Item No.1 and 2 of the decree schedule landed properties in terms of the preliminary decree passed in OS No.69/2018 and to allot separate shares to the parties in terms of the decree and to submit the report with sketch to the Hon'ble Court.

2. I.A. supported with memorandum of facts stating that, this petition has been filed by the petitioners to effect partition of the decree schedule properties in terms of preliminary decree passed by this court in O.S.No.69/2018. The said petition may be treated as part of this memorandum of facts to avoid repetition of facts. Item No.1 and 2 of the decree schedule properties are



agricultural lands. Hence division of the said lands is to be effected by the surveyor. Hence prays to allow the annexed application.

3. IA opposed by respondent by filing written objection contending that, the petition filed by the petitioner is not maintainable both in law and on facts of the case. That the decree passed by this trial court has not attained the finality and decree of the this court is pending before the Hon'ble High Court of Karnataka in RFA No.478/2023. There are every chance to succeed in the said appeal. In view of pendency of the RFA the present petition is liable to be dismissed. The court commissioner is not able to identify the property as per decree as they had not identified as per land revenue act. Hence appointment of the court commissioner is not solve the dispute. Hence prays to dismiss the application with heavy costs.



4. Heard both respective counsels, perused IA No.I annexed Memorandum of facts, objection filed by respondent and other material on record.

5. The points that arise for consideration are as follows.

POINTS

1. Whether the applicant/defendant made out grounds to appoint court commissioner?
2. What order?
6. My answer to the above points are as follows;

Point No.1: In the Affirmative

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

REASONS

7. **Point No.1:** The petitioners were the plaintiffs and the respondent was the defendant before the trial court. Plaintiffs filed O.S.No.69/2018, suit came to be decreed by drawing a preliminary decree. As per the decree



the plaintiff No.1 entitled to 1/3rd share, plaintiff no.2 to 6 together entitle for 1/3 share and defendant entitled for 1/3rd share in the suit schedule property. Now this petition arisen out of judgement and decree passed in O.S.No.69/2018. The learned counsel for petitioner filed present application for appointment of commissioner to demarcate the share of the parties in suit schedule property as per preliminary decree. Though respondent contended that RFA is pending before the court, but not produced any document, there is no stay in the present case. Hence, if the application is allowed and if Taluk Surveyor appointed for demarcation of property no hardship will be caused to respondent. **Hence point no.1 answered in the Affirmative,**

8. **Point No.2:** Hence in view of the above discussion this court proceed to pass the following;



ORDER

IA No.I filed under Order XXVI Rule 13 and 14 R/w Section 151 of CPC by the applicants/ Petitioners is hereby allowed.

Taluk Surveyor Koppa is appointed as court commissioner to demarcate the shares of the parties in suit schedule property as per preliminary decree.

Issue commissioner Warrant if P.F paid.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 07th day of March, 2024)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.