

KACM510007392019



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

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

**Dated this the 20<sup>th</sup> day of February 2024**

**FDP.No.02/2019**

**BETWEEN:**

Sri.Chethana

...Petitioner.

V/s.

**AND:**

Sri.M.V.Krishnamurthy and others

...Respondents.

**IA.No.5**

**BETWEEN:**

Sri.Chethana

...Applicant/Petitioner

V/s.

**AND:**

Sri.M.V.Krishnamurthy and others

...Opponents/Respondents.

**ORDERS ON IA NO.5**

Learned counsel for the applicant/Petitioner filed present application under Order XXVI Rule 9 R/w Section 151 of CPC for appoint a court commissioner preferably a Taluk Surveyor N.R.Pura Taluk through the office of the Thahasildar N.R.Pura Taluk to measure and bifurcate the 1/8<sup>th</sup> share in the schedule properties of parties in the petition in their respective shares.

2. I.A. supported with affidavit of Petitioner stating that, as the plaintiff had filed O.S.No.53/1999 on the file of this Hon'ble Court for partition of his 5/38<sup>th</sup> share in all the petition schedule properties i.e., the suit properties against the respondents/ defendants. The said suit was decreed on 22.01.2008 granting 5/38<sup>th</sup> Share each to the petitioner. Aggrieved by the judgment and decree of this court Respondent/Defendant have preferred R.F.A. No.421/2008 on the file of Hon'ble High Court of



Karnataka, Bangalore. The High Court allowed the appeal in part. The judgment and decree passed by the Civil Judge Senior Division, Tharikere in O.S.No.53/1999 dated 22.01.2008 is modified holding that the appellant and respondent are entitled to 1/8<sup>th</sup> share each in all the plaint schedule properties by its judgment and decree dated 03.12.2013. According to the judgment and decree of the Hon'ble High Court, the petitioner is entitled to 1/8<sup>th</sup> share in all the suit properties.

3. Hence he filed the FDP petition for partition of the properties by meets and bounds as per the preliminary decree and to draw final decree after affecting the partition of the properties as per preliminary decree.

4. Now, it is necessary to appoint a Taluk Surveyor as a court commissioner Taluk Surveyor N.R.Pura Taluk to measure and bifurcate the 1/8<sup>th</sup> share in the schedule



properties as stated in the FDP petition in their respective shares of the parties. Hence prays to allow the annexed application for appointment of Taluk Surveyor N.R.Pura through Thahasildar N.R.Pura as a court commissioner to measure and bifurcate the  $1/8^{\text{th}}$  share in schedule properties as stated in the FDP petition in their respective shares of the parties to meet the ends of justice. Hence, prays to allow the application.

5. IA opposed by Opponents/ Respondents No.4 and 6 by filing written objection contending that, the application of the petitioner is not maintainable in law and facts, hence liable to be dismissed. The averment in the application of the petitioner is that he has got  $5/38^{\text{th}}$  share in the schedule property is totally false and denied herewith. The petitioner is entitled  $1/8^{\text{th}}$  share in the suit schedule / FDP property. The petitioner has not stated the above suit is even now not concluded and the respondent



has filed an application to include some of the properties in the FDP proceedings and the court was please to rejected the application as not maintainable and not taken the due diligence at the time of judgment and decree. Hence the said order is challenged before the Hon'ble High Court.

6. The respondent has preferred writ petition before the Hon'ble High Court of Karnataka in Writ Petition No.6192/2019 and the same is pending for the file and objection to the writ petition. Hence if the property is measured, the respondent will be put to great hardship and irreparable loss and inconvenience, if the writ petition is allowed once again the court has to appoint the fresh commissioner for the partition of the schedule properties along with the other properties.

7. The petitioner in the above case knowingly full well as filed the application without mentioning the writ



petition is pending before the Hon'ble High Court of Karnataka. Hence prays to reject the application for the measurement of the FDP schedule property. On these grounds prays to reject the IA No.V with costs.

8. Heard both respective counsels, perused IA No.5 annexed affidavit, objection filed by respondents and other material on record.

9. The points that arise for my consideration are as follows:

**POINTS**

1. Whether the applicant /Petitioner made out grounds for appointment of court commissioner?
2. What order?
10. My answer to the above points are as follows:

Point No.1 in the Affirmative  
Point No.2 As per final order  
for the following;



**REASONS**

11. **Point No.1:** This petition arises out of preliminary decree passed in O.S.No.53/1999. The plaintiff filed O.S.No.53/1999 claiming 5/38<sup>th</sup> share in suit schedule property, suit decreed on 22.01.2008 granting 5/38<sup>th</sup> share each to the plaintiff. Aggrieved by the same the defendants preferred appeal in R.F.A No.421/2008 before the Hon'ble High Court of Karnataka, appeal allowed in part, the judgment and decree in O.S.No.53/1999 was modified holding that the plaintiff and defendants are entitled for 1/8th share each in all the plaint schedule properties. Hence now the petitioner/plaintiff filed this F.D.P to draw final decree as per preliminary decree.

12. This FDP petition for partition of properties by meets and bounds as per the preliminary decree.

13. Learned counsel for respondent submits that W.P.No.6192/2019 is pending before the Hon'ble High



Court of Karnataka. But the respondent not produced any document and there is no any stay in the present case. Hence if the application is allowed no hardship caused to respondents. Hence this application is deserves to be allowed. **Hence, I answer point no.1 in the Affirmative.**

14. **Point No.2:** Hence I proceed to pass the following;

**ORDER**

IA No.V filed under Order XXVI Rule 9 R/w Section 151 of CPC by the applicant/ Petitioner is hereby allowed.

The Taluk Surveyor N.R.Pura is appointed as court commissioner to demarcate suit schedule property as per preliminary decree.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 20<sup>th</sup> day of February, 2024)

Sd/-

**(B.S.Rayannawar)**

Senior Civil Judge and JMFC.,  
N.R.Pura.