

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
PRINCIPAL J.M.F.C., TARIKERE**

**PRESENT :**

**SRI VAIDYA SHREEKANT,**

*B.Sc, LL.B.*

Senior Civil Judge & Prl. J.M.F.C.,  
Tarikere.

(Name of the Presiding Judge)

**DATED : THE 19<sup>th</sup> DAY OF MARCH 2024**

**FDP No.22/2022**

**ORDER ON IA NO.I FILED UNDER ORDER XXVI RULE 9 OF  
CPC**

The instant application has been filed by the petitioners praying to appoint Taluk Surveyor attached to the office of Tahasildar, Ajjampura/ Tarikere as court commissioner to demarcate the suit schedule properties as per the preliminary decree passed in OS No.14/2019.

2. In the affidavit annexed to the application, the petitioner No.2 deposed that she has initiated present final decree proceedings based on preliminary decree passed in OS No.14/2019. The suit item No.1 to 7 properties are landed properties and they have to be demarcated by the Taluk Surveyor attached to the office of Tahasildar, Ajjampura.

3. The respondent No.1 filed objections statement to the application and contended that the application is not maintainable. The petitioners have sworn to false affidavit by suppressing the material facts. Against the Judgment and Decree, the respondent No.1 preferred RFA No.1406/2022 before Hon'ble High Court of Karnataka and in the said appeal the Hon'ble High Court passed interim order directing this court not to pass final decree without leave etc.

4. Heard the counsel for petitioners. The respondents did not choose to advance any arguments on instant application.

5. I have gone through the preliminary decree passed in the above referred suit. The suit filed by the plaintiffs was decreed by this court by granting 1/5<sup>th</sup> share each to the plaintiffs in suit schedule properties. As discussed above, the main objection of the respondent No.1 is that Regular First Appeal is pending before Hon'ble High Court of Karnataka and there is direction not to pass final decree without leave of Hon'ble High Court. I have gone through the order of Hon'ble High Court also wherein it has been ordered thus;

*“By Interim Order, it is directed that final decree in FDP No.22/2022 shall not be drawn without leave of this court. IA No.I/2022 stands disposed of”.*

6. The above order is clear that final decree cannot be drawn without the leave of Hon'ble High Court of Karnataka. The operation and execution of preliminary decree is not stayed by the Hon'ble High Court. Hence, there is no hurdle to proceed with the case up to the stage of drawing up of final decree. The submitting of report by court commissioner would take it's own time. If at all, report is submitted by the commissioner, the acceptance of the same would be subject to order that would be passed by Hon'ble High Court of Karnataka. Hence, I am of the opinion that the application deserves to be allowed. Accordingly, I proceed to pass the following:

### **ORDER**

IA No.I filed by the petitioners under Order 26 Rule 9 of CPC is hereby allowed.

The ADLR, Ajjampura attached to the office of Tahasildar, Ajjampura is appointed as court commissioner to demarcate and suggest the

scheme of partition in respect of suit item No.1 to 7 properties as per the preliminary decree.

The petitioners are directed to remit the commissioner fees directly in the office of Tahasildar or on the instructions of the court commissioner as the case may be.

Issue commissioner warrant after filing of memo of instructions.

Call on:07.06.2024.

Sd/-  
**(VAIDYA SHREEKANT)**  
SENIOR CIVIL JUDGE & PRL. JMFC.,  
TARIKERE.