

I.A.No.4 filed by petitioner under order 26 Rule 9 R/W sec. 151 of CPC requesting the Court to appoint an Taluk Surveyor Honnali as a court commissioner so as to visit properties of petitioner and respondents and measure the same, by fixing boundaries and thereby file report along with sketch.

The copy of application is served on learned counsel for respondents.

The learned counsel for respondents has orally objected stating that, no grounds are made out to allow application.

Heard on both side.

Perused the records placed before the Court.

The following points are arises for my consideration.

Point No.1 : Whether applicant/petitioner has made out sufficient grounds to appoint Taluk surveyor Honnali as a court commissioner as prayed in application?

Point No.2 : What Order ?

My answers to the above points are as follows :

Point No.1 : in the Affirmative.

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

REASONS

Point No.1 : As per records placed before the Court it is not in dispute that, suit filed by the petitioner in O.S.No.23/1982 was decreed by the Court by its Judgment and Decree dated 18/10/1986. It is to be noted that, in suit it is held that, petitioner is entitled for 1/4th share each in suit A and B schedule properties. Now petitioner is requesting the court to appoint Taluka Surveyor as a Court Commissioner to effect division of suit properties as per share declared in preliminary decree. Taking into consideration of reasons assigned in an affidavit filed in support of an application if same is allowed, no hardship would be caused to the other side. Hence, I answer point No.1 in the Affirmative.

Point No.2 : On above made discussion on point No.1, I proceed to pass the following:

ORDER

I.A.No.4 filed by petitioner U/O. 26 Rule 9 of CPC is hereby allowed.

The Taluka Surveyor of Honnali Taluk is appointed as Court commissioner to ascertain feasibility of division of suit properties as shown in schedule to the plaint or to effect division of suit properties as per preliminary decree passed in O.S.No.23/1982 and file report thereon.

The Court commissioner fee tentatively fixed as Rs.3,000/- .

To deposit Court commissioner's fee.

Call on :

Sd/-

Senior Civil Judge
Harihara.