

ORDER ON I.A.No.II

This is an application filed by petitioners under order XXVI Rule 13 r/w section 151 of CPC, praying to order to appoint an advocate as court commissioner to demarcate the properties as per preliminary decree with the assistance of ADLR.

2. In support of application, applicant/power of attorney holder of petitioner no.1 sworn to an affidavit that as per preliminary decree in O.S.No.52/2020, the petitioners are entitled to 1/6th share in the suit properties. In order to demarcate the properties, it is necessary to appoint the court commissioner. With these reasons, prayed to allow the application.

3. On the other hand, the learned counsel for respondent no.7 filed objection that application is not maintainable either in law or on facts. The petitioners prayed to grant them 1 acre 22 cents, as per the sketch prepared by petitioners, which is untenable and cannot be sustained under law. The application is not maintainable and it is liable to be dismissed with cost.

4. Heard the argument of learned counsel for petitioners on I.A.No.II.

5. The respondent no.7 counsel has not canvassed argument on I.A.No.II. Hence, the argument of respondent no.7 counsel on I.A.No.II was

taken as nil, as per order dated:21-06-2023.

6. I have perused the I.A.No.II, annexed affidavit, objection and materials placed on record.

7. The petitioners have filed the suit in O.S.No.52/2020 on the file of this court for the relief of decree for partition and separate possession. The said suit came to be decreed by a judgment and decree dated:22-12-2021, declaring that plaintiffs are entitled to 1/6th share in the "A" schedule properties by metes and bounds. There is no appeal preferred against the said judgment and decree. As per the said judgment and decree, the properties to be demarcated. In order to demarcate the properties, the commissioner is to be appointed. The petitioners counsel sought for an appointment of advocate as court commissioner to demarcate the properties, as per preliminary decree with the assistance of ADLR. The objection of respondent no.7 that petition is not maintainable and cannot be allowed, is not sustainable under law, as the preliminary decree in O.S.No.52/2020 is not set aside or reversed by the Appellate Court. In view of the above, the application is to be allowed. Accordingly, I proceed to pass the following:

ORDER

The I.A.No.II filed by petitioners
under order XXVI Rule 13 r/w section 151

of CPC, is hereby allowed.

The Advocate of this Bar is appointed as court commissioner to demarcate the properties as per preliminary decree.

The A.D.L.R. of Belthangady is directed to depute any one of the surveyor to assist the court commissioner to demarcate the properties.

No order as to cost.

Prl.Sr.Civil Judge & J.M.F.C.,
Belthangady,D.K.