

16.06.2026

For Orders

Orders On Commissioner Report

The decree holder has filed the present execution petition. During the course of execution proceedings, an application was filed seeking appointment of a court commissioner for the purpose of ascertaining and identifying the properties of the DHR. Accordingly, a court commissioner was appointed and he submitted his report before the court. After submission of the report, the decree holder submitted no objections to the commission report. However, JDR No.1 to 4 filed detailed objections challenging the correctness and legality of the report. In view of the objections raised, the Court Commissioner was summoned and examined before the court and was subjected to cross-examination. During the course of arguments the counsel for JDR No.1 to 4 relied upon the decisions reported in 2008 (3) KCCR 1374, W.P. No.201274/2022 and 2026 INSC 340.

During the course cross examination, the court commissioner admitted that he had not personally verified whether notices issued in respect of the commissioner's work were duly served upon all concerned parties. He further

admitted that he has not aware as to whether such notices had actually been served upon the parties before undertaking the commissioner's work. The commissioner has also admitted that though a surveyor was in ADLR was engaged for carrying out the commissioner's work, no material or document relating to the engagement, authorization or particulars of the surveyor was produced along with the report. The commissioner further admitted that his report does not disclose the manner in which the property was measured. The method adopted for identification of the property or the basis upon which the conclusions contained in the report were arrived upon. Further, the court commissioner admitted that he was not aware of the contents of the memo of instructions filed by the parties and had not specifically considered the same while conducting the commission proceedings and also not replied the memo of instructions.

The evidence elicited in the cross-examination creates serious doubt regarding the procedure adopted by the commissioner while executing the commissioner's work. A commissioner's report is intended to assist the court. And must be prepared strictly in

accordance with the warrant issued by the court and the procedure described under law. The report should disclose the steps taken by the commissioner, the presence or absence of the parties, the method of inspection, the basis of measurements, and the materials relied upon in arriving at the conclusions. In the present case, the evidence of the commissioner himself demonstrates that essential procedural requirements were not properly complied with. When the commissioner is unable to satisfactorily explain the manner in which the commissioner's work was conducted and admits material deficiencies, Regarding service of notice, measurement of the property and compliance with the instructions issued by the court. The report loses its evidentiary value and cannot be safely relied upon for adjudication of the rights of the parties in the execution proceedings. Therefore, this court is of the considered opinion that the commissioner's work has not been executed properly. Proper manner and the report submitted by the court commissioner cannot be accepted.

Hence, I proceed to pass the following:

ORDER:

The objection filed by the JDR No.1 to 4 are thereby allowed.

The commissioner report submitted by the court commissioner is thereby rejected.

The report shall not be acted upon for the purpose of deciding the execution proceedings.

Liberty is reserved to the decree holder if so advised to seek appointment of a fresh commissioner in accordance with law.

Call on 27.06.2026.

sd/-

*I Addl. Senior Civil Judge and JMFC.,
Hubballi.*