

ORDER ON COMMISSIONER REPORT

The plaintiff has filed the petition under Sec.54 of CPC R/w Order 20 Rule 18 of CPC to pass final decree in view of the preliminary decree passed in O.S. No.122/2009.

2. As per the plaintiffs' application, the surveyor, Hubli has prepared the scheme of partition as per his report and sketch in respect of petition ABCD agricultural lands and produced the same before the court.

3. The plaintiffs and defendants counsels have filed their objections to the report of court commissioner, though the plaintiffs have denied the correctness of the report in which it is suggested for payment of money in respect of little bit less land in one portion to give it in partition and separate possession but finally admits the report as perfectly legal and valid.

4. The defendants counsel has taken up the contention in his objection that though the court commissioner has produced the two notices dated 14.7.2013, 12.9.2013 but in respect of the court commissioner work on 12.9.2013, the notice was

issued to the plaintiff No.1 only but not issued the said commissioner work notice to the defendants and thereby the court commissioner work facilitated in order to make convenience and favourable report in favour of the plaintiffs and thereby no such court commissioner work was actually conducted and no actual and real sketch was prepared and thereby the court commissioner report is liable to rejected.

5. Heard the arguments of both the sides.

6. Now the points that arise for my consideration are:

1) Whether the court commissioner report is liable to be considered for further proceedings?

2) What order?

7. My findings to the above points are as under:

Point No.1 : In the Affirmative

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

:REASONS:

8. **POINT No.1** :- As could be seen from the court commissioner report submitted with the sketch

prepared in respect of petition ABCD landed properties, a two panchayadast dated 20.10.2013 prepared by the City Surveyor, Hubli and statement of P.w.1 dated 20.10.2013, are produced. In one of the statement Yadast it is said that the conducting of court commissioner work was postponed due to heavy rain. Therefore the notice issued to conduct the court commissioner work on 14.7.2013 went in futile due to heavy rain prevented to conduct the court commissioner work. The other postal receipts and the postal covers shows that another notice was issued to the plaintiffs and defendants to conduct the court commission work on 20.09.2013 and notice was served to the plaintiff No.1 only whereas the notices addressed to the defendants returned as door locked and same is evident from the closed envelop produced by the court commissioner. Further the court commissioner has in respect of 4 landed properties prepared the sketch and scheme of partition in detail for effecting the plaintiffs 1/3rd share in the suit schedule properties by metes and bounds. Further in view of little bit lands portion for convenient partition by metes and bounds, the court commissioner has suggested that the defendants shall pay Rs.1,666/- to the plaintiff No.2 to 4 and

Rs.14,167/- to the plaintiff No.1. In view of the above said material on record, the court commissioner has in respect of petition landed properties conducted court commission work for better interest of the parties in view of the preliminary decree. Therefore the objections are not sustainable. Hence I answer the point No.1 in the Affirmative.

9. **Point No.2** : In view of the forgoing reasons and discussions, I proceed to pass the following:

ORDER

The report of court commissioner in respect of petition items No. ABCD (Items No.1 to 4) landed petition properties is accepted for partition and separate possession.

In respect of petition item No. E and F in respect of suit item No.5 and 6 gram panchayat house property No.168/B, 169 of Noolvi village, the plaintiff has to take steps.

(S.N.Kalkani)
Prl. Senior Civil Judge, Hubli.

For steps call on 19.12.2015

(S.N.Kalkani)
Prl. Senior Civil Judge, Hubli.

