

ORDERS ON IA NO.VIII

The Respondent No.2a to 2c, 4, 6a to 6d, 8 to 10 have filed this application U/Sec.151 of CPC to recall the order dated 25.05.2023 in respect to appointing of Sri.Venkatesh Desai, Chartered Accountant to verify the Accounts of Defendant No.10 and submit the report for 1/7th share of the petitioner.

2. To this application the petitioner counsel filed objections by contending that the preliminary decree is clear that the petitioner is entitled to claim 1/7th share in the profits of the Defendant No.10 firm. Though, the appeal is pending before the Hon'ble High Court of Karnataka, there is no stay order for further proceedings. Hence, the counsel for the plaintiff prays to dismiss the application.

3. I have heard the arguments and perused the materials.

4. On dated 25.05.2023, the Court has allowed the applications filed U/O.26 rule 13 of CPC by petitioners. The Court has appointed Tahasildar,

Hubballi as a Court Commissioner in respect to suit schedule Item No.2 properties A to H. Chartered Accountant is appointed as Court Commissioner to ascertain the net profit of the Petrol Bunk Business.

5. On 12.06.2023 the Court has recorded that memo is filed that drawing of final decree is stayed in RFA No.100141/2022.

6. On dated 17.08.2023 the counsel for the petitioner filed a memo that the name of the Court Commissioner already mentioned as Venkatesh Desai be modified as Sri.Basavaraj K. Chennai, Chartered Accountant.

7. The said memo is pending for consideration.

8. It is the contention of the Respondent No.2a to 2c, 4, 6a to 6d, 8 to 10 that, there is no decree for mesne profit, the petitioner is debarred from claiming any profit in the Defendant No.10 Firm.

9. It is worth note that, the Court has appointed the Chartered Accountant to ascertain the Annual net

profit of the Petrol Bunk. Therefore, it is appears to the Court, if the respondent aggrieved by the orders of the Court that too on application filed U/O.26 rule 13 of CPC, they ought to be challenge the before the Hon'ble High Court of Karnataka. As such the application filed by the Respondent No.2a to 2c, 4, 6a to 6d, 8 to 10 to recall the order dated 25.05.2023 does not survive. Hence, I proceed to pass the following :

ORDER

IA No.VIII filed by the Respondent No.2a to 2c, 4, 6a to 6d, 8 to 10 U/Sec.151 of CPC it is hereby dismissed with cost of Rs.200/-.

I Addl. Senior Civil Judge
and JMFC, Hubballi.

ORDERS ON IA No.IX to XI

The respondent No.7 filed these applications U/O. 26 Rule 13 of CPC to appoint Court Commissioner i.e., Tahisildar/ADLR Dharwad, is sought to be appointed as court commissioner to submit report regarding scheme for

division of non agricultural plots in the suit properties. In another application the qualified engineer or advocate is sought to be appointed as court commissioner for submitting scheme for division of house properties in the suit properties. In another application qualified chartered accountant is sought to be appointed to verify the annual accounts of Mrs.M G Indi, Petroleum Dealers, Karwar Road, Hubballi from the date of suit i.e., 25/03/2015 till submission of report.

2. The objection of the respondent 2 (a) to (c), 4, 6(a) to (d), 8, 9 and 10 is that the RFA.No.100141/2022 is already preferred and notices are served and the judgment and decree is under challenge and said petrol bunk business is not joint family firm and hence, appointment of chartered accountant can not be done.

3. I have heard the arguments canvassed by the L/d counsel for the parties and perused the materials on record. It is worth to note that, this Court has considered the similar applications filed by the petitioner.

4. It is undisputed fact that, the respondent No.2a to c have preferred RFA No.100141/2022 before the Hon'ble High Court of Karnataka. However, already it is held to be joint family property and there is no stay and hence calling for report by appointing court commissioners can not cause any injury to Defendants/respondents. Mere appointing the Commissioner to demarcating the landed property as per preliminary decree does not amounts to acceptance of report submitted by the concerned authority. Moreover, appointing of expert to demarcating the shares of the parties does not creates any multiplicity of proceedings between the parties. Hence, it is appears to the Court application filed by the respondent No.7 is deserves to be allowed. Accordingly, I proceed to pass the following :

ORDER

IA No.IX to XI filed by the respondent No.7 U/O 26 Rule 13 of CPC are hereby allowed.

Any advocate is proper to be

appointed as court commissioner in respect of suit schedule item no.(i) properties (a) to (e). Tahasildar/ADLR, Hubballi, proper to be appointed in respect of suit schedule item no.2 properties (a) to (h).

Sri.Basavaraj. K. Chenni, Chartered Accountant No.66, Sangam, 1st Floor, Kotilinganagar, Airport Road, Hubballi is appointed as Court Commissioner to ascertain the annual net profits of the petrol bunk business supra.

The other terms of appointment is kept open to be decided as and when it comes up for consideration.

The Court Commissioner fees of Rs.3,000/- each is fixed.

For suggesting the name of advocate call on by 29.01.2024.

I Addl. Senior Civil Judge
and JMFC, Hubballi.