

03-02-2021

P – P.L.S.

R-1 to R-3 IDJ

For Orders.

ORDER ON I.A. No.I

The instant application has been filed by the Learned Counsel for the Petitioners under Order XXVI Rule 13 R/w Sec. 151 of CPC accompanied with an Affidavit of Petitioner No. 3 praying for an Order to appoint Taluka Surveyor, Hubballi as the Court Commissioner to make measurement and to prepare a scheme of partition for allotment of shares of the Petitioners in the suit schedule property as per Preliminary decree.

2. In spite of sufficient opportunities given to the Respondents, they did not file objection to the said Application.

3. Heard the Learned Counsel for the Petitioners on I.A. No. I. Perused I.A., Affidavit and materials available on record.

4. The instant Application has been filed by the Learned Counsel for the Petitioner under Order XXVI Rule 13 R/w Sec. 151 of CPC

accompanied with an Affidavit of the Petitioner No. 3 praying for an Order to execute the Preliminary Decree passed in O.S. No. 118/2011. The Petitioner No. 3 in his Affidavit has stated that the other Petitioners are his brothers and sisters and they have filed a Suit in O.S. No. 118/2011 before the III Addl. Senior Civil Judge, Hubballi for Partition and Separate Possession of the suit properties and for declaration. He further stated that after hearing the matter, the suit was decreed on 18-08-2015 by awarding 1/7th share each to the Petitioners in the suit properties. Thereafter, the Respondents being aggrieved by the Judgment had preferred an Appeal before the Hon'ble Vth Addl. District & Sessions Judge, sitting at Hubballi in RA No. 250/2015 and the same was dismissed on 18-07-2019 by confirming the Judgment of the Trial Court. But, the defendants failed to hand over their shares by demarcating the same by metes and bounds. Therefore, it is essential to appoint the Court commissioner to effect partition as per Preliminary Decree and therefore, he has prayed to appoint City Surveyor or Taluka Surveyor as Court

Commissioner to prepare the Scheme of Partition. Hence, he has prayed to allow the Application.

5. Upon going through the materials available on record i.e., the Certified copy of the Judgment and Decree passed in O.S. No. 118/2011 , it shows that the suit of the Plaintiffs was decreed and ordered that the plaintiffs are having 1/7th share each in the suit property by metes and bounds. The Certified Copy of the Judgment in RA No. 250/2015 dated : 18-07-2019 on the file of Hon'ble V Addl. District & Sessions Judge, Dharwad, sitting at Hubballi, also shows that the Appeal preferred by the defendants was dismissed and the Judgment and Decree passed in O.S. No. 118/2011 is confirmed. The RTCs and the description of the suit property shows that the suit property is an Agricultural land.

6. At this juncture, it is important to state that as per the State amendment in respect of Sec. 54 of CPC, the Revenue Officer not below the rank of Tahasildar or such other person as the Court may appoint as commissioner to effect partition of agricultural property. In this case, Schedule property is an agricultural land and hence, it is

essential to appoint the Tahasildar Hubballi as Court commissioner with the assistance of the Taluka Surveyor to effect partition and separate possession as per decree passed in O.S. No. 118/2011. Hence, I have satisfied with the reasons assigned in the application. Accordingly, I proceed to pass the following :

ORDER

I.A. No. I filed by the Learned Counsel for the Petitioners under Order XXVI Rule 13 R/w Sec. 151 of CPC is hereby allowed.

Tahasildar, Hubballi is appointed as a Court commissioner with the assistance of Taluka Surveyor to effect partition and separate possession of the Suit property as per the Preliminary Decree passed in O.S.No. 118/2011 dt: 18-08-2015.

The Commissioner fee is fixed at Rs. 2,500/- tentatively.

Issue commission warrant if the Commission fee is deposited.

**III Addl. Senior Civil Judge &
JMFC, Hubballi**