

**17.04.2026**

Case called out.

This matter is coming for consideration of the commissioner report. The learned counsel for the petitioners has opposed the commissioner report citing that the commissioner has favored the illegal occupants who have erected structures over the suit schedule property without due process of law and that the scheme of partition is not proper and in accordance with the law, that the structures which are illegal are given importance and hence the commissioner report is directed to be set aside and an order for re-partition and for the suggestion of scheme of partition is sought to be made.

2. To the contrary the respondents have opposed the objection and have cited that the court commissioner is right and that the decree itself is wrong because the share of the parties is not determined with reasonable certainty. Hence the commissioner report is sought to be accepted.

3. On perusal of the records, the decree has granted  $1/3^{\text{rd}}$  share each to plaintiffs and defendant or respondent No. 1, now deceased. When there are three parties and the court has declared  $1/3^{\text{rd}}$  share, it is deemed that all the three parties are entitled for  $1/3^{\text{rd}}$  share. On perusal of the court commissioner report, the commissioner would suggest some other occupants other than the ones named in the proceedings. This court is not obliged to accommodate these persons because these occupants, their developments or erections are during the pendency of the proceedings and they are not to be given leniency to.

4. Hence the Court Commissioner has not suggested the scheme of partitions in accordance with law. Perhaps he has been influenced by the fact that houses are erected and that scheme of partition would not be beneficial for these houses. This Court opines that the scheme of partition and the court commissioner report is not in accordance with law and the same is to be re-carried out accordingly the following:

**ORDER**

The court commissioner is hereby directed to re-carry out the commissioner work and suggest a scheme of partition by ascertaining 1/3<sup>rd</sup> share of each for the petitioners and the respondent No.1.

Also the court commissioner is hereby directed not to take into consideration any of the constructions made over the suit property.

Re-issue commissioner warrant accordingly with the above observations.

Call on 18.06.2026.

(Naveen F. Dsouza)  
Civil Judge and J.M.F.C.,  
Navalgund.