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|-----|-----------------------------------------------------------------|---------------------------------------------------------|
| i.  | Provision under which the application is filed                  | U/o XXVI rule 13 of CPC                                 |
| ii  | Relief sought for                                               | For appointment of Taluk Surveyor as court commissioner |
| iii | The date on which the application is filed                      | 12.11.2025                                              |
| iv  | Number of the application                                       | XIII                                                    |
| v   | The date on which the objection is filed by different opponent  | 09.12.2025                                              |
| vi  | The date on which the order were passed on the said application | 13.03.2026                                              |

**ORDERS ON I.A.No.XIII**

The petitioners have filed IA No.XIII under Order XXVI Rule 13 of CPC for appointment of Taluk Surveyor as Court Commissioner for effecting the division in respect of item No.1 to 6 of the petition schedule properties.

2. The respondent No.4 has filed objection to the aforesaid application.

3. Heard learned counsel for the petitioners and respondent No.4.

4. After perusal of records of the case, following points would arise for my consideration:

1) Whether the appointment of court commissioner is just and necessary for effecting division of item No.1 to 6 of petition schedule properties?

2) What order?

5. My answer to the above points are as under:

**Point No.1:** In the Affirmative.

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

**REASONS**

6. **POINT NO.1:** In the affidavit appended to the application, the petitioner No.1 stated that he along with other petitioners have filed OS No.477/1992 before this court for partition and separate possession in respect of item No.1 to 7 of suit schedule properties. The said suit has been came to be decreed in respect of item No.1 to 6 of the suit schedule properties. As such, they have filed the present petition for effecting the division of petition schedule properties. It is contended that, in order to effect the division of item No.1 to 6 of petition schedule properties, it is necessary to appoint Taluk Surveyor attached to the office of Tahasildar Belur as court commissioner and submit report. It is contended that, if the commissioner is appointed and allotted shares, no injustice will be caused to the respondents. On the other hand, if the application is dismissed, they will be put to untold hardship. Hence, petitioners prays to allow the IA No.XIII

7. Per contra, the respondent No.4 filed objection to the aforesaid application. In the objection, the respondent No.4 has denied the application averments in material aspects. It is contended that, he has filed IA No.III to include the property bearing Sy.No.242 measuring 3 acre 23 guntas situated at Muttuganne Village, Kasaba Hobli, Belur Taluk

in the final decree proceedings. The said IA has been allowed and ordered to include the said property. Accordingly, petitioners have included the said property in the petition. Therefore, it is just and necessary to effect the division of the said property along with other properties. Hence, the respondent No.4 prays to dismiss the IA No.XIII.

8. I have perused the materials on records. On perusal of the materials on records, it is clearly discloses that, the petitioners have filed OS No.477/1992 against the respondents for partition and separate possession in respect of item No.1 to 7 of suit schedule properties. The said suit has been came to be decreed in respect of item No.1 to 6 of suit schedule properties. Thereafter, the respondents have preferred an appeal before the Addl. District and Session court in RA No.54/2004. The said appeal has been came to be dismissed by the First Appellate Court. Thereafter, the respondents have preferred RSA No.1448/2006 before the Hon'ble High Court of Karnataka against the judgment of First Appellate Court. The said appeal filed by the respondents is came to dismissed. Thereafter, the petitioners have filed the present petition to effect the division of petition schedule properties and allotting their separate share by metes and bounds as per the preliminary decree passed by this court.

9. The respondent No.4 contended that, during the year 2013 he has filed IA No.III to include Sy.No. 242 measuring 3 acres 23 guntas in the petition and said property has been included by the petitioners as per the order of this court. Hence, the respondent No.4 submitted that he has no objection if the division is effected including the item No.7 of petition schedule property.

10. It is pertinent to note that, as per the order passed on IA No.III filed by the respondent No.4, this court has ordered to include the property bearing Sy.No.242 measuring 3 acre 23 guntas in the petition. Accordingly, the petitioners have included the said property as item No.7. Thereafter an enquiry has been conducted. After closer of the enquiry and after hearing both side, this court has rejected the claim of the respondent No.4 seeking partition in respect of item No.7 of petition schedule property by holding that the said property is the self acquired property of the petitioners. When the court has rejected the claim of the respondent No.4 seeking partition in respect of item No.7 of the petition schedule, the question of directing the court commissioner to effect the division of the petition schedule properties including item No.7 does not arise at all as the said property has been hold as self acquired property of the petitioners. Hence, the contention of the respondent

No.4 to effect the division of petition schedule properties including item No.7 cannot be accepted. In order to effect the division of item No.1 to 6 of petition schedule properties, it is just and necessary to appoint the Taluk Surveyor as court commissioner. If the application is allowed as prayed for, no loss or injustice will be caused to the respondent No.4. On the other hand, if the application is not allowed, the petitioners will be put to great hardship. Therefore, this court is of the considered opinion that, the petitioners have made out sufficient grounds for appointment of Taluk Surveyor Belur as court commissioner. Hence, ***point No.1 is answered in the Affirmative.***

**11. Point No.2:** For the foregoing reasons, I proceed to pass the following:

**ORDER**

I.A.No.XIII filed by the petitioners under Order XXVI Rule 13 of CPC is hereby allowed.

The Taluk Surveyor Belur is appointed as court commissioner to effect the division of item No.1 to 6 of petition schedule properties.

The commissioner fee of Rs.2,000/- is fixed.

Issue commissioner warrant to the court commissioner to effect the division of item No.1 to 6 of petition schedule properties as per the preliminary decree passed by this court if the commissioner fee is deposited and PF is paid.

Call on for commissioner report by:

**Prl. Civil Judge & JMFC,  
Belur.**