

ORDERS

The petitioner/applicant filed the application under order 26 Rule 13 R/w 54 of CPC seeking the appointment of Taluka surveyor to demarcate the "A" schedule landed property and to appoint an advocate to demarcate the VPC properties as court commissioner.

2. In spite of sufficient opportunity, the respondents No.1, 3 and 5 have not filed objections to the said IA.

3. I have heard the arguments of counsel for the petitioner and perused the materials available on record.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the applicant has made out sufficient grounds to allow the application?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1: In the affirmative.

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

REASONS

6. **Points No.1:-** The applicant/petitioner in her accompanying affidavit annexed to the application has contended that she had filed the suit in O.S. No.89 of 2019 before this court seeking relief of partition and separate

possession of her 1/5th share by metes and bounds. It is further stated that, the "A" schedule properties are the landed and VPC properties. In order to demarcate her share as per the preliminary decree it is necessary to appoint the Taluka surveyor for the purpose of demarcation of her share in "A" schedule properties and to appoint an advocate to demarcate the VPC house properties. Accordingly, the applicant is ready to pay the commissioner fee and thereby prayed to allow the application.

7. In the said back grounds, I have perused the accompanied affidavit and preliminary decree passed by this court. On perusal of the same, this court in O.S. No.89 of 2017 filed by the petitioner against the defendant/respondents seeking relief of partition and separate possession of her 1/5th share this court was declared the 1/5th share each of petitioner No.1 and defendant No.4 by virtue of preliminary decree dated 29-01-2019 in the item No.1 and 2 of the "A" schedule properties. Hence, in order to demarcate the share of the plaintiff and defendant No.4, it is necessary to appoint the Taluka Surveyor, Hirekerur to demarcate the 1/5th share each of the plaintiff and defendant No.4 in the item No.1 of the suit schedule property. Further the item No.2 of the suit "A" schedule property being the house property the Engineer of PWD department is more competent person rather than the advocate for scientific demarcation of the item No.2 of the "A" schedule property which are the house properties. Accordingly, it is just and necessary to appoint the engineer of

PWD department, Hirekerur to demarcate the item No.2 of the "A" schedule property. More over, respondents No.1, 3 and 5 have not contested the said IA and respondent No.2, 4 and 6 to 9 are placed absent. In view of the same for the purpose of enforcement of preliminary decree, it is just and necessary to allow the application. Accordingly, the point No.1 is answered in the affirmative.

8. **Point No.2**:- In the light of said discussions, this court is proceed to pass following:-

ORDER

I.A. filed by the petitioner/applicant under order 26 Rule 13 R/w 54 of C.P.C is hereby allowed.

Consequently, the Tahasildar of Hirekerur is hereby appointed as court commissioner to demarcate the 1/5th share each of the plaintiff and defendant No.4 with respect to item No.1 of the "A" schedule property.

The Engineer of PWD, Department, Hirekerur is hereby appointed as court commissioner to demarcate the 1/5th share each of the petitioner and respondent No.4 with respect to item No.2 of the "A" schedule property in terms of preliminary decree.

The commissioner fee is fixed at Rs.1,000/- each.

For memo of instruction.

Call on: 07-03-2020.

F.D.P No.06 of 2019

**Addl. Civil Judge & JMFC.,
Hirekerur.**

(Order pronounced in the open
court vide separate order)

ORDER

I.A. No.XI filed by the
applicant/ plaintiff No.2(a) under
order III Rule 2(a) R/w 151 of
C.P.C is hereby dismissed.

For plaintiffs evidence.

Call on: 02-03-2020.

Addl. Civil Judge & JMFC.,
Hirekerur.

Summons issued to defendants No.4(a), 4(b), 4(d) and 4(e) is served personally. Called out absent. Hence they are all placed exparte.

Summons issued to the defendant No.4(c) is served on defendant No.4(b) who is none other then his brother.

The defendant No. 4(c) call out absent, service held sufficient and defendant No.4(c) is also placed exparte.

For arguments.

Call on: 04-03-2020.