

COMMON ORDERS ON IA.NOs.III & IV

The applicant/petitioner has filed IA Nos.III and IV U/ O 26 Rule 13 R/W Sec.54 of CPC with a prayer to appoint Taluka Surveyor as Court Commissioner to suggest the scheme of partition in respect of item Nos.A to K of suit schedule properties and an Advocate Court Commissioner to effect the partition of item Nos.L and M of suit schedule properties and submitted proposal of division of suit schedule properties in terms of preliminary decree passed in OS No.1/2015, dtd:13-11-2018 in the interest of justice and equity.

2. It is stated in the accompanying affidavit that, petitioner has obtained preliminary decree for partition and separate possession of 1/3rd share in all the suit schedule properties. Hence, it is just and necessary to appoint a Taluka Surveyor and an Advocate as Court Commissioner to suggest the scheme of partition and submit proposal of division of the suit schedule properties in terms of preliminary decree. Hence this application.

3. The learned counsel for the respondent has filed objections to the said applications contending that, the applications are not maintainable in view of the appeal in RFA No.100059/2019 is pending before the Hon'ble High Court of Karnataka, Dharwad Bench against the preliminary decree passed in OS No.1/2015. He further stated that, just to harass the respondents, the said applications are filed without waiting for the result in the appeal which is pending before the Hon'ble High Court of Karnataka, Dharwad Bench. He further submitted that, Hon'ble High Court of Karnataka by its order dtd: 21-10-

2019 directed that, executing court not to draw final decree. Hence, the applications are premature and the shares of the parties are yet to be decided by the Hon'ble High Court of Karnataka and false facts are stated in the accompanying affidavit applications. Hence, appointment of commissioners does not arise at all and prays to defer the said applications till disposal of the said appeal before the Hon'ble High Court of Karnataka, Dharwad Bench.

4. Heard both sides and perused the application.

5. The points arise for my consideration are as follows :-

1) Whether the petitioner has made out sufficient grounds to allow the applications ?

2) What order?

6. My findings on the above points are as under :-

Point No-1 : In the Affirmative.

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

REASONS

7. **Point No.1:-** Petitioner has obtained preliminary decree for partition and separate possession of 1/3rd share in all the suit schedule properties in OS No.1/2015, dtd: 13-11-2018. As against the said judgment, the respondents have preferred RFA No. 100059/2019 before the Hon'ble High Court of Karnataka, Dharwad Bench. Wherein the Hon'ble High Court of Karnataka has directed not to draw final decree till disposal of the appeal. However, there is no stay to proceed with the FDP proceedings. Therefore, there is no impediment to this court to appoint the court commissioner to suggest the scheme for division of property as per the preliminary decree. The Hon'ble High Court of Karnataka only stayed the drawing of final decree. Hence, it is just and necessary to obtain report from the Taluka Surveyor

in respect of item Nos.A to K properties and report from Advocate court commissioner in respect of item No.L and M of the suit schedule properties to effect partition by metes and bounds in accordance with preliminary decree. Accordingly, I answer the above **point in the Affirmative.**

8. **Point No-2** :- In view of the above discussion, I proceed to pass the following:

ORDER

I.A Nos.III and IV filed by the petitioner U/Sec.XVI Rule 13 R/W Sec.54 of CPC is hereby allowed.

Taluka Surveyor is appointed as a Court Commissioner to suggest the scheme of partition and submit the proposal for division of item No.A to K of suit schedule properties and an Advocate court commissioner is appointed to suggest the scheme of partition in respect of item Nos.L and M of suit schedule properties in accordance with the preliminary passed in OS No.1/2015, dtd: 13-11-2018.

To suggest the name of the Advocate as court commissioner.

Court Commissioner fee is fixed at ₹.1,500/- each tentatively.

Call on : 27-10-2025.

**1st Addl. Senior Civil Judge &
JMFC, Ranebennur.**