

The counsel for petitioner present and submits that, he has already filed IA No.7 for appointment of court commissioner and an order may be passed.

Heard the counsel for petitioner.

No representations from respondents.

Kept by for order.

ORDER ON I.A. No.7

The application is filed by the petitioner under Order XXVI Rule 13 read with Section 151 of the Code of Civil Procedure, seeking appointment of Court Commissioners to effect partition in respect of the suit schedule properties in terms of the preliminary decree passed RA No.45/2017.

2. The petitioner filed a suit for partition and separate possession in OS No.210/2012 and the same came to be dismissed. The petitioner had preferred an appeal in RA

No.45/2017, the same was allowed in part holding that, the petitioner is entitle for 1/6th share in the suit schedule B-1 to 3 and B-5 to 8 properties. It was also held as Defendants No.1 to 5 are also entitle for 1/6th share each in the said properties.

3. IA relates to partition of suit schedule properties, which suit schedule B, item No.1 property is agricultural land assessed to payment of land revenue and item No.2, 3 & 5 to 8 properties, which are house properties, by metes and bounds.

4. Though the respondents have appeared before the Court, they have neither filed objections nor contested the application. However, admittedly, there is no material on record to show that any order of stay has been granted in the said appeal.

5. In view of the Karnataka Amendment to Section 54 of the Code of Civil Procedure, where the decree is for partition and separate possession of an undivided estate assessed to land revenue, such partition has to be carried out through the Revenue Authorities. Therefore, for suit schedule item No.1 is agricultural properties, appointment of the Taluka Surveyor as Court Commissioner is necessary.

6. So far as suit item No.2, 3 & 5 to 8 house properties are concerned, division by metes and bounds requires appointment of Advocate.

7. In the absence of any stay to the operation of the preliminary decree and there being no objections from the respondents, the application deserve to be allowed.

Hence, I proceed to pass the following:

ORDER

I.A. No.7 filed by the petitioners under Order XXVI Rule 13 read with Section 151 of CPC is hereby allowed.

The Taluka Surveyor, Ranebennur, is hereby appointed as Court Commissioner to inspect, prepare, and effect partition of the suit schedule B, item No. 1 agricultural property in accordance with the preliminary decree passed in RA No.45/2017 and to submit a report along with a sketch and blocks.

He also directed to submit the market value of each blocks.

The petitioner shall bear necessary expenses for divisions as per KLR Act.

An Advocate, Ranebennur is hereby appointed as Court Commissioner to inspect, prepare, and effect partition of the suit item No.2, 3 & 5 to 8 properties by metes and bounds in accordance with the preliminary decree passed in RA No.45/2017 and to submit a report along with a sketch and blocks.

He also directed to submit the market value of each blocks.

The Advocate is also directed that, if

item No.2, 3 & 5 to 8 properties are not available for divisions by metes and bounds, he shall do inquiries and submit the market value of each properties to effect the partition in terms of partition Act.

The Commissioner's fee payable to the Advocate is fixed at Rs.2,000/- (Rupees Two Thousand only) tentatively.

The Office is directed to issue commission warrants to both the Commissioners along with copies of this order and the judgment and preliminary decree passed in RA No.45/2017 subject to payment of necessary process fee.

The petitioner shall deposit the Commissioner's fee and suggest the name of the advocate and payment of necessary PF by 17.02.2026.

Sd/-

Pri Civil Judge & JMFC,
Ranebennur.

