

ORDERS ON IA

Learned counsel for the respondent No.1/petitioner No.3 in O.S No. 69/2014 has filed IA U/s 26 rule 9 r/w Sec.151 of CPC seeking to appoint Court commissioner for demarcation of petition schedule properties and submit his report.

2. In the affidavit annexed to the application the respondent No.1 submitted that in OS No.69/2014 the suit filed by the petitioners for partition and separate possession has been decreed and declared half share in the suit schedule properties. As such,

F.D.P. 17/2019

appointment of court commissioner is necessary for the division of the suit schedule property by metes and bounds. Hence, prays to allow the application.

3. On the other hand, the respondent No.3 filed objection and contended that, the item No.3 property has been reserved infavour of respondent No.2 Mahadevashetty. As such the respondent No.1 have no right in the item No.3 property. As such appointment of commissioner in relation to item No.3 property does not arise. Hence, prays to dismiss the application.

4. Heard both side. Perused entire material on record.

5. Admittedly this FDP filed by the petitioners seeking to draw final decree in pursuance of preliminary

decree passed in OS No.69/2014. Thus, the appointment of court commissioner is necessary to inspect the spot and demarcate the property regarding feasibility of partition as per the preliminary decree passed by this court.

6. So far as contention of respondent No.3 that the item No.3 has been reserved infavour of respondent No.2 is concerned, the judgment clearly discloses that the suit schedule item No.3 shall be allotted to the share of the defendant No.1/respondent No.2 herein as far as possible while effecting actual division by metes and bounds in the final decree proceedings. However it is to be noted that except appointing the court commissioner for demarcation of property regarding feasibility of partition by metes and bounds as per the preliminary decree

F.D.P. 17/2019

passed by this court, there is no other option to the respondent No.3 to get property to his share. Thus, for all these reasons this court proceeds to pass the following;

O R D E R

IA filed by the respondent No.1 U/s 26 rule 9 r/w Sec.151 of CPC is hereby allowed.

The Taluk Surveyor, Mysuru is here by appointed as court commissioner to inspect the spot, prepare sketch and submit report regarding feasibility of partition as per the preliminary decree passed in OS No.69/2014 pertaining to petition schedule properties.

F.D.P. 17/2019

Parties are directed to
furnish memo instructions.

The commissioner fee is
fixed at Rs.5,000/-.

For deposit of
commissioner fee and
compliance R/by 25.01.2025.

Sd/-

JUDGE,

Addl. Court of Small Causes,
Mysuru