

**ORDERS ON IA No.VI**

Learned counsel for the respondent No.1/plaintiff No.3 in O.S No. 69/2014 has filed this application U/O XXVI rule 9 r/w Sec.151 of CPC seeking to appoint Court commissioner for demarcation of petition schedule properties as per decree.

2.In the affidavit annexed to the application the respondent No.1 submitted that the suit in OS No.69/2014 for partition and separate possession has been decreed on 27.10.2018. The 3<sup>rd</sup> respondent preferred appeal in RFA No.152/2019 also dismissed on 03.02.2020. Hence they filed the above petition to draw final decree. The earlier application of the 1<sup>st</sup> respondent was allowed. The court commissioner/Taluk Surveyor has not divided the suit schedule land as per

**FDP 17/2019**

preliminary decree. Hence the present application for fresh appointment of court commissioner. No hardship will be caused to other side. 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 in favour of respondent No.2 Mahadevashetty. As such appointment of commissioner in relation to item No.3 property does not arise. Hence, prays to dismiss the application.

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

5. Admittedly this petition 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 in favour 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 passed by

this court, there is no other option to the respondent No.3 to get property to his share. Hence appointment of court commissioner is necessary in this case.

7. This is the second application filed for appointment of court commissioner as the earlier report of the court commissioner is not in accordance with the preliminary decree. On perusal of the commissioner report it is seen that the court commissioner allotted equal share to the petitioners and respondents No.1 and 2. However as per preliminary decree the petitioners No.1, 2 and respondent No.1 together entitle for half share and the respondent No.2 i.e., Mahadeva Shetty alone entitle for half share. Therefore the shares allotted to the parties are not in accordance

**FDP 17/2019**

with preliminary decree and hence it is necessary to allow the application. Thus, for all these reasons this court proceeds to pass the following;

**O R D E R**

IA No.VI filed by the respondent No.1 U/O XXVI rule 9 r/w Sec.151 of CPC is hereby allowed. The earlier commissioner report dated. 07.04.2025 is hereby set aside.

The Taluk Surveyor, Mysuru Taluk, Mysuru and Mr.A.E.Ramesh, B.E.Civil Engineering, R.P.Road, Nanjanagud town, Nanjanagud, are here by appointed as court commissioners to inspect the spot, prepare sketch and submit report regarding feasibility of partition as per the preliminary decree passed in

**FDP 17/2019**

OS No.69/2014 pertaining to  
petition schedule properties.

Parties are directed to  
furnish memo of instructions.

Commissioner fee is fixed  
at Rs.3,000/- to the court  
commissioner No.2.

For deposit of commissioner  
fee and compliance call on  
17.03.2026.

-Sd/-  
JUDGE,  
Addl. Court of Small Causes,  
Mysuru