

KAMS080002122018



**IN THE COURT OF PRINCIPAL SMALL CAUSES & SENIOR
CIVIL JUDGE & M.A.C.T. AT MYSURU.**

Presided Over by SRI AFTHAB.K

F.D.P./8/2018

Dated this the 20th day of July, 2026

Petitioner/s:

Sri. Jeevan S/o Late N. Puttaswamy,
Age: 21 years, R/at Navilur village,
Chamarajanagara taluk and district.

(By Sri. K.S. Nagaraju, Advocate)

Vs.

Respondent/s.

1. Smt. Sannamma W/o. Late Nanjundaiah,
Major,
2. Ningamma S/o. Late Nanjundaiah,
Major,
3. Smt. Mahalakshmi W/o. Ninganna,
Major,
4. Kum. Shruthi D/o. Ninganna,
Minor,
5. Sri. Suni S/o. Ninganna,
Major,
6. Kum. Suchitra D/o. Ninganna,
Minor,

7. Sri. Kumar S/o. Ninganna,
Major,

8. Sri. Mahesh S/o. Nanjundaiah,
Major,

1 to 8 are r/at Srirampura village,
Kasaba hobli, Mysuru taluk.

9. Smt. Puttalakshmi W/o. Mahadevu,
Major, R/at Dasaraguppa, Srirampura taluk,
Mandya district.

10. Smt. Suvarna W/o. Hanumegowda,
Major, R/at Galigarahundi village, Mysuru.

11. Smt. Mangala W/o. Murali,
Major, R/at D No.1065/4A, Srinivasa Nilaya,
Farm road, Vidyaranyapuram, Mysuru.

12. K.S. Chari S/o. Late Alasingarachar,
R/at D No.861, 8th cross, 8th main,
Kamakshi hospital road, Srirampura,
Mysuru.

13. Smt. Padmavathamma, Dead by LRs
a) Kumara S/o. Late R.S. Srinivasa Rao,
Major, R/at #387, 4th stage, Thonachikoppal,
Chamaraj Mohalla, Mysuru.

14. Smt. Puttathayamma, Dead by LRs,
a) Sri. Chikkamallegowda S/o. Late Madegowda,
Age: 62 years,

b) Smt. Kavitha D/o. Chikkamallegowda,
Age: 34 years,

c) Smt. Savitha D/o. Chikkamallegowda,
Age: 32 years,

d) Manju S/o. Chikkamallegowda,
Age: 30 years,

All are r/at Varakudu village, Varuna hobli,
Mysuru taluk.

15. Sri. M. Anatharamasharma S/o. Late Krishna,
Age: 63 years, President, Brindavan House Building
Co-operative Society, LIG, New Kantharaj Urs road,
Kuvempunagar, Mysuru.

(R1, 7 to 10 – Sri. O.Sham Bhat, Advocate)

(R12 – Sri. N.N. Kashiappa, Advocate)

(R13(a) – Sri. N.G.Prasad, Advocate)

(R15 – Sri. C.Appaji Gowda, Advocate)

* * *

PARTIES TO I.A.

Applicant: Sri. Jeevan

Vs.

Opponent: Sri. M. Anatharamasharma and others

* * *

ORDERS ON IA-4 FILED UNDER ORDER XXVI RULE 13 READ WITH SECTION 151 OF CIVIL PROCEDURE CODE

The application under consideration i.e., IA-4 is filed by the petitioner under Order XXVI Rule 9 of CPC seeking that this court be pleased to depute the taluk surveyor as court commissioner for the purpose of surveying the suit schedule properties which have been *phoded*, thereby incorporating the same (ಒಟ್ಟುಗೂಡಿಸಿ) as per the decree and report the same before this court for the purpose of carrying out effective partition and thereby enable the court to demarcate and deliver the share of the plaintiff as per decree, passed by this court in the interest of justice and equity.

2. In support of the application under consideration, the petitioners have filed the affidavit contending that the uncle of the petitioner had instituted OS.438/2004 seeking partition and separate possession of plaintiff's share in the suit schedule properties, as the petitioner was a minor at the time of institution of the suit. Further the said suit came to be dismissed on merits, being aggrieved by the same, the uncle of the petitioner, in his capacity as guardian of the petitioner, preferred to RA.32/2014 on the file of Hon'ble III Addl. District Judge, Mysuru which came to be allowed vide judgment dated 06.02.2017 and 1/8th share came to be allotted to the plaintiff by setting aside the judgment of this court.

2.1. Further the respondent No.1, 7 to 11 filed review petition which was tried as Review Petition.4/2017 which came to be allowed and it was held that the petitioner was entitled for 49/270th share in the suit schedule properties. Hence, the petitioner is entitled for 49/270th share over the suit schedule properties but the said suit schedule properties are *phoded* as Sy No.3/2, 3/3, 4/2, 69/1, 69/1A1, 69/1A2 and 69/1B. Further in order to divide the properties and to allot the share of the petitioner to him, the deputation of taluk suveyor as court commissioner for the purpose of incorporating the same as per decree and to effect the petition and deliver the possession to the petitioner is very much necessary. Further if the application is rejected, the petitioner will be put to irreparable loss and injury whereas on the other hand, no hardship would be caused to the other side if the application is allowed. On these amongst other ground it is prayed that the application be allowed.

3. Upon service of copy of applications, the respondent No.15 filed objections contending that the application is neither maintainable under

law nor facts and hence is liable to be dismissed *in limine*. Further the petitioner has already filed application seeking same relief i.e., IA-3 under Order 26 Rule 9 of CPC dated 26.06.2023 which came to be allowed by this court. Further in pursuance to the same, the court commissioner conducted survey and filed his report on 25.11.2024 and no order in respect of the report of the court commissioner is passed. Wherefore, no grounds are made out by the petitioner to seek similar relief by way of second application, hence the application is liable to be dismissed as not maintainable. Further the petitioner has not challenged the court commissioner report instead he has directly filed IA-4 which is contrary to law. Further the petitioner is filing one application after another just to drag the proceedings and to mislead the court. On these grounds it is prayed that the application be rejected.

4. Heard the learned counsel for the petitioner and respondents.

5. After carefully analyzing the arguments canvassed, upon perusal of the averments in affidavit accompanying the IA-IV, the objections put forth to the said IA and other materials available on record, the following points arise for the consideration of this court.

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

(2)What order?

6. On careful perusal of the affidavit accompanying the IA-IV and after going through the objections raised and having scrutinized the records, the above raised points for consideration are answered as under:

Point No.1 : In the Affirmative

*Point No.2 : As per the final orders
for the following.*

REASONS

POINT No.1 :

7. At the very outset it is pertinent to clarify that the application under consideration is though filed seeking appointment of court commissioner in FDP proceeding but the prayer sought is not demarcation of shares of the plaintiff by metes and bounds instead the prayer sought is to depute taluk surveyor as court commissioner for the purpose of unifying or incorporating strips of properties which have been phoded so as to enable the court commissioner to effect partition as per the preliminary decree.

8. The main objection raised by the respondent No.15 is that by way of IA-III which came to be allowed by this tribunal on 26.06.2023, the petitioner had sought the same relief and the said application was allowed. Further in pursuance to the directions of this court, the court commissioner filed his report on 25.11.2024 yet without any further order being passed in respect of the said report, the petitioner has come up with this application seeking the same relief.

9. With this ground of objection in mind, when the records are perused it becomes clear that the IA-III was filed by the petitioner seeking appointment of court commissioner to effect partition by surveying the property, demarcating the share of the petitioner and delivering the possession of share allotted to the petitioner; and in pursuance to the said order court commissioner warrant was issued and the commissioner submitted his report which reads as under:

“ಮೇಲ್ಕಂಡ ವಿಷಯ ಹಾಗೂ ಉಲ್ಲೇಖಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಮೈಸೂರು ತಾಲ್ಲೂಕು ಕಸಬಾ ಹೋಬಳಿ ಶ್ರೀರಾಂಪುರ ಗ್ರಾಮದ ಸ.ನಂ.3/2, 3/3, 4/2 ಹಾಗೂ ಸ.ನಂ.69/1 ರ ಎಫ್.ಡಿ.ಪಿ. ನಂಬರ್ 8/2018 ರಲ್ಲಿ ಘನ ನ್ಯಾಯಾಲಯದಿಂದ ಆದೇಶವಾದಂತೆ ಭೂಮಾಪಕರಿಗೆ ಹಂಚಿಕೆ ಮಾಡಲಾಗಿ ಭೂಮಾಪಕರು ನಿಗದಿತ ದಿನಾಂಕದಂದು ನೋಟಿಸ್ ನೀಡಿ ಸ್ಥಳಕ್ಕೆ ಹಾಜರಾಗಿ ಭೂದಾಖಲೆಗಳಾದ ಮೂಲ ಹಾಗೂ ಹಿಸ್ಸಾ ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ಸ.ನಂ.3/2 ರಲ್ಲಿ ಷೆಡ್ಯೂಲ್ ನಂತೆ 2 ಎಕರೆ 21 ಗುಂಟೆ ಇದ್ದು ಆಕಾರ್ ಬಂದನಂತೆ 0-07-12 ಗುಂಟೆ ಇರುತ್ತದೆ. ನ ಸ.ನಂ.3/3 ರಲ್ಲಿ ಷೆಡ್ಯೂಲ್ ನಂತೆ 1 ಎಕರೆ 31 ಗುಂಟೆ ಇದ್ದು ಆಕಾರ್ ಬಂದನಂತೆ 1 ಎಕರೆ 30 ¼ ಗುಂಟೆ ಇರುತ್ತದೆ ಹಾಗೂ ಸ.ನಂ.4/2, ಷೆಡ್ಯೂಲ್ ನಂತೆ 0-15 ಗುಂಟೆ ಇದ್ದು ಆಕಾರ್ ಬಂದನಂತೆ 0-32 ಗುಂಟೆ ಇರುತ್ತದೆ 69/1 ರಲ್ಲಿ ಷೆಡ್ಯೂಲ್ ನಂತೆ 0-16 ಗುಂಟೆ ಇದ್ದು ಆಕಾರ್ ಬಂದ್ ನಂತೆ ಸ.ನಂ.69/1 ಎ 1, 1 ಎ 2, 1 ಬಿ ಎಂಬ ಪೋಡಿ ಆಗಿರುತ್ತದೆ. ಮಾನ್ಯ ಘನ ನ್ಯಾಯಾಲಯದ ಆದೇಶದಂತೆ ಷೆಡ್ಯೂಲ್ ವಿಸ್ತೀರ್ಣಕ್ಕೂ ವ್ಯತ್ಯಾಸವಿರುವುದರಿಂದ ಅಳತೆ ಕೆಲಸ ನಿರ್ವಹಿಸಲು ಈ ಹಂತದಲ್ಲಿ ಅವಕಾಶವಿರುವುದಿಲ್ಲ ಎಂಬ ಮಾಹಿತಿಯನ್ನು ಮಾನ್ಯ ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಿವೇದಿಸುತ್ತಾ ಪ್ರಾರ್ಥನೆ ಕಡತವನ್ನು ಮುಂದಿನ ಅವಗಾಹನೆಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.”

Hence according to the commissioner himself there is a difference in the extent of land and boundaries, when compared to the extent and boundaries mentioned in the plaint. It is in pursuance to this report the petitioner came up with IA-IV seeking that taluk surveyor may be deputed as court commissioner for the purpose of unifying or incorporating strips of properties which have been phoded so as to enable the court commissioner to effect partition as per the preliminary decree. Hence, the necessity of orders being passed in respect of report of the court commissioner dated 18.10.2024 does not arise as for all practical purposes the court commissioner has not carried out any commissioner work, instead has only set out his difficulties and inability to carry out the commissioner work. Needles to state, it is for this reason that this court is not inclined to accept the ground of objection raised by the respondent No.15 that the prayer sought in IA-III and IA under consideration are one and the same. Perhaps, the said ground of objection is totally misconceived, to say the least.

10. The contention of the respondent No.15 is that the application is filed to prolong the proceedings is also bereft of reasons as the very purpose of filing the IA under consideration is to ensure that the court commissioner can effect the partition as per the preliminary decree without any hindrance. For the foregoing reasons, this court is of the firm opinion that the grounds urged by the respondent No.15 would not suffice to reject the application under consideration as the very purpose of seeking appointment of court commissioner by the petitioner herein is to enable effective partition. Hence, *Point for consideration No.1 is answered in the affirmative.*

11. **Point No.2:**

In view of the finding given while answering point No.1, this court proceeds to pass the following order:

ORDER

“The IA-IV filed under Order XXVI Rule 9 read with section 151 of C.P.C. by the petitioner is hereby allowed.

Consequently, the taluk surveyor, Mysuru taluk is deputed as court commissioner for the purpose of surveying the suit schedule properties which have been phoded, thereby unifying or incorporating the same (ಒಟ್ಟುಗೂಡಿಸಿ) as per the decree and submit a report so as to effect partition in compliance of preliminary decree.

*The Commissioner fee is tentatively fixed at
₹.5,000/-.*

*The office is hereby directed to issue
Commissioner Warrant if P.F. is paid and
Commissioner fee is deposited."*

(Dictated to the stenographer, computerized by her, corrected and then pronounced by me in the open court, this the 20th day of July, 2026)

(AFTHAB. K)

Prl. Judge, Court of Small
Causes & MACT., Mysuru.