

KAMS300002232020



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl.Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 22nd day of January 2026

FDP No.1/2020

- Petitioners:
1. Saraswathi, W/o Appajigowda,
Aged about 55 years, R/at Naganahalli
village, Hanagodu Hobli, Hunsur Taluk.
 2. H.S.Mohan Kumara, S/o Shivanegwoda,
Aged about 38 years, R/at Hosahalli
village, Hunsur Taluk.

-Vs-

- Respondents:
1. Jayamma, W/o Late Govindgowda,
Aged about 60 years,
 2. Thejashwini, W/o Nagaraja,
D/o Govindgowda,
Aged about 37 years,
 3. Anupama, W/o Venkatesha,
D/o Govindgowda, Aged about 35 years,
 4. Kalpana, W/o Bommegowda,
Aged about 42 years,
Respondents No.1 to 4 are
R/at Naganahalli Village,
Hanagodu Hobli, Hunsur Taluk.

5. Nagendara, S/o Puttaraju,
Aged about 42 years,
R/at Thammadahalli village,
Hunsur Taluk.
 6. Smt.Gowramma, W/o Late Puttaraju,
Aged about 70 years,
 7. Smt.Deveeramma, W/o Late Puttaraju,
Aged about 68 years,
- Both are residing at Naganahalli village,
Hanagodu Hobli, Hunsur Taluk.

1.	Provision under which the applications are filed	:	Under Order 26 Rule 12 and 13 R/w Section 54 of CPC
2.	Relief sought for	:	To appoint court commissioner preferably a Taluk Surveyor to demarcate the share
3.	The date on which the application is filed	:	20.12.2024
4.	Number of the applications	:	IA.No.II
5.	The date on which the objections are filed by different opponents	:	24.03.2025
6.	The date on which the orders passed on the said application	:	22.01.2026

ORDERS PASSED ON IA NO.II

The learned counsel for the petitioners filed IA No.II under Order 26 Rule 12 and 13 R/w Section 54 of CPC to appoint the court commissioner preferably a Taluk Surveyor to

demarcate the share of the petitioners over the petition schedule properties.

2. The application is supported with the affidavit of the 1st petitioner wherein it is stated that, they have obtained preliminary decree in their favour in OS No.26/2014 and the respondents are depriving them from their lawful share over the petition schedule property. They have filed the application for appointment of court commissioner to demarcate their share and put them in possession of their lawful share. Hence, prayed to allow the application.

3. On the other-hand the learned counsel for respondent No.4 filed the objection contending that, the application is not maintainable under law or on facts and the affidavit averments are false. The petitioners have not mentioned specifically about properties to be demarcated and its boundaries. Furthermore, the petitioners have not shown the properties purchased by the 4th respondent. The application is filed with malafide intention. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsel for the petitioners and the 4th respondent and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the petitioners have made out sufficient grounds for appointment of court commissioner for the purpose of demarcating their share over the petition schedule properties?
2. What order?
5. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:** The petitioners have filed this petition against the respondents under Section 54 R/w Order 20 Rule 18 of CPC to pass final decree in respect of the preliminary decree passed by this court in OS No.26/2014 which was disposed on 24.04.2019. There are totally six items of properties in this petition. It is to be noted that, after filing this petition this court issued notice to the respondents and respondents No.1, 4 and 5 have appeared through their respective counsels, respondents No.2 and 3 in spite of service of notice have not chosen to appear before the court and they remained absent. It is pertinent to note that, only respondent No.4 has filed objection to the main petition contending that, he had purchased an extent of 2 acres 17 guntas in Sy.No.29 from defendants No.1 to 3 and as such the petition is not maintainable against him.

7. During the pendency of the petition, the applicants have filed an application under Order 1 Rule 10(2) R/w Section 151 of CPC to implead them as respondents No.6 and 7 and the said application was already allowed and they have been impleaded. Amendment was carried out and amended petition is also filed. In support of the petition the petitioners have produced certified copy of the preliminary decree passed by this court in OS No.26/2014. Admittedly, the said suit was for the relief of partition and separate possession and it goes show that, in the said suit all the respondents herein have appeared through their respective counsels. As per the preliminary decree the suit filed by the plaintiffs has been decreed by holding that, they are entitled for 1/6th share each by metes and bounds. On the basis of said preliminary decree this final decree proceedings has been initiated by the petitioners herein. Admittedly, the decree schedule item No.1 to 4 and item No.6 properties are the landed properties fetching land revenue and item No.5 property is the house property with vacant site situated at Naganahalli Village. The petitioners are entitled for 1/6th share each. The 4th respondent filed the objection contending that, the property purchased by him has not been described in the petition. It is very important to note that, there is no relief granted by this court in respect of the alleged purchased property of the 4th respondent. This court cannot go beyond the decree passed by this court. Therefore,

no grounds has been made out by the 4th respondent to oppose this application. In order to demarcate the share of the petitioners over the petition schedule properties it is just and necessary to appoint the court commissioner. Accordingly point No.1 is answered in the affirmative.

8. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.II filed by the petitioners under Order 26 Rule 12 and 13 R/w Section 54 of CPC is hereby allowed.

Accordingly, the ADLR, Hunsur is hereby appointed as Court Commissioner to demarcate the share of the petitioners as per the preliminary decree in respect of the decree schedule properties.

Since, item No.5 property is RCC House with vacant site it is necessary to appoint an advocate or any other person as Court Commissioner and the petitioners are required to suggest the name of any such person as Court Commissioner to demarcate their share in respect of item No.5 of the decree schedule property.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 22nd day of January, 2026.)

(Anitha)

Prl.Senior Civil Judge and JMFC.,
Hunsur.

