

**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE
AND JMFC., AT HUNSUR,**

Dated, this the 20th day of June 2026

**Presided Over by Smt. Bhagyamma
B.com. L.L.B.,**

F.D.P.No.25/2019

Between:

Smt. Kamalamma @ Sarojamma Petitioner

V/s.

Srinivasa
Dead by his LRs & others Respondents

PARTIES TO I.A.No.XI and XII

Smt. Kamalamma @ Sarojamma Applicant /
Petitioner

V/s.

Srinivasa
Dead by his LRs & others Opponents/
Respondents

ORDERS ON I.A.No.XI and XII

The petitioner/applicant has filed I.A under Order XXVI Rules 13 and 14 read with Section 151 of the Code of Civil Procedure seeking appointment of a Court Commissioner.

2. It is contended that in O.S. No.219/2005, a preliminary decree came to be passed on 17.09.2011 declaring the share of the

parties in the suit schedule properties. Subsequently, in R.A. No.683/2011, the appellate court modified the decree and held that the petitioner is entitled to **1/9th share** in Item Nos.1 to 6 of the suit schedule properties, while the defendant Nos.1 and 2 are entitled to **4/9th share each**.

3. The petitioner submits that the preliminary decree has attained finality and that actual division of the suit schedule properties has not yet been effected. It is further stated that Item No.6 of the schedule property is situated at Hebbalu Village, Hebbalu Hobli, K.R. Nagar Taluk, Mysuru District, whereas Item Nos.1 to 5 are situated within Hunsur Taluk. Since partition by metes and bounds requires technical assistance, the petitioner seeks appointment of the Assistant Director of Land Records/Taluk Surveyor as Court Commissioner to divide the properties in accordance with the preliminary decree and submit a report to the Court. The petitioner contends that no prejudice would be caused to the respondents if the application is allowed and that refusal of the application would cause hardship to her.

4. The petitioner has also filed a memo reiterating that she has already been declared entitled to 1/9th share under the preliminary decree as modified in appeal. It is specifically stated that partition is required in respect of Item No.6 situated at Hebbalu Village, Hebbalu Hobli, K.R. Nagar Taluk, Mysuru District. The petitioner therefore requests the Court to take necessary steps for effecting partition in accordance with the decree.

5. The respondent Nos.3(a) and 3(b) have filed objections opposing the application. The objectors contend that the application is not maintainable either in law or on facts. It is specifically pleaded that the third respondent, Somegowda, had purchased item no.2 of the schedule property bearing Survey No.53 measuring 36 guntas situated at Kallahalli Village, Bilikere Hobli, Hunsur Taluk, under a registered sale deed dated 18.03.2006 from Srinivasa and his family members.

6. According to the objectors, while effecting partition, the share corresponding to the 1st defendant may be adjusted towards the property already sold and the share of the petitioner can be allotted from other available properties. It is contended that the petitioner has already been allotted her share in respect of Item Nos.3 to 6 and therefore equitable allotment can be made from other properties instead of Item No.2. On these grounds, the respondents contend that appointment of a Commissioner in respect of Item No.2 is unnecessary and the application deserves to be dismissed. They have furnished copy of sale deed dated 08.03.2006.

7. Heard and Perused the application, affidavit, memo for instructions and objections filed by respondent Nos.3(a) and 3(b).

8. The records disclose that a preliminary decree has already been passed in O.S. No.219/2005 and the same has been modified in R.A. No.683/2011. The appellate decree declares the entitlement of the parties and specifies their respective shares. The entitlement of the petitioner to 1/9th share is therefore no

longer in dispute and has attained finality. The present proceedings are final decree proceedings. In a final decree proceeding, the Court is required to translate the declared shares into actual possession by dividing the properties by metes and bounds. The records clearly disclose that the suit has already been decreed and modified the shares of the parties in the appeal and the decree has been attained finality. This Court is required to proceed with the final decree proceedings for division of the properties by metes and bounds. The objections raised by the respondent regarding alienations or title over certain items are matters which can be examined during the course of execution of the commission warrant and submission of the Commissioner's report. In order to effectively implement the decree and to ascertain the physical division of the schedule properties, appointment of a Court Commissioner is necessary. So, the objection of respondent-3 is not sustainable. So, there is no any legal impediment to allow the present application. In fact, Order XXVI Rule 13 of C.P.C allows the court to issue a commission to a person to make a partition or separation of immovable property, as modified in R.A. No.683/2011. Anyhow, the objections of respondent Nos.3(a) and 3(b) are kept open for consideration after submission of the Commissioner's report. Accordingly, this court proceeds to pass the following order:-

ORDER

I.A.No.I filed by the petitioner is hereby allowed.

***The Taluk Surveyor, Tahsildar Hunsur Taluk and
The Taluk Surveyor, Tahsildar K R Nagar Taluk, are***

hereby appointed as Court Commissioner to effect partition of the petition schedule properties in accordance with the decree **as modified in R.A. No.683/2011.**

The Commissioner shall inspect the properties with the assistance of the competent survey staff and submit a report along with a sketch showing the proposed division of the properties within 2 months from the date of receipt of warrant.

The Commissioner's fee is tentatively fixed at **Rs.4,000/- each to commissioner**, to be deposited by the petitioner.

Office is directed to issue Commissioner Warrant after payment of PF and deposit of Commissioner fee.

Call on for Commissioner's Report.

20.06.2026
I Addl. Senior Civil Judge & JMFC,
Hunsur