

KAMS400018802023



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT K.R.NAGAR**

PRESENT: Sri. Aravindra B.C., *B.A., L.L.B.*,
Senior Civil Judge & JMFC,
K.R. Nagar.

Dated this the 02nd day of July, 2025

FDP No.6/2023

Petitioner : Sri. Darshankumar

-V/s-

Respondents : Sri. S.A.Ramachandra and Others

Parties to I.A.

Applicant : Sri. Darshankumar,
S/o Yashodamma and
S.A.Ramachandra,
Aged about 29 years,
R/at: Salekoppalu village,
Chunchanakatte Hobli,
Saligrama Taluk.

**..... Petitioner
(By Sri. P.D. Adv.)**

-V/s-

Opponents : 1. Sri. S.A.Ramachandra,
S/o Late Marigowda @
Appajigowda,
Aged about 59 years.



2. Sri. S.A.Prakash,
S/o Late Marigowda @
Appajigowda,
Aged about 57 years.
3. Smt. Arulatha,
D/o Late Marigowda @
Appajigowda,
Aged about 55 years.
4. Smt. Lakshamma
@ Rathna,
W/o Late Marigowda @
Appajigowda,
Aged about 80 years.

All are R/at:
R/at: Salekoppalu village,
Chunchanakatte Hobli,
Saligrama Taluk.

..... Respondents

**(R1 & 4 by Sri. K.S.D., Adv.)
(R2 & 3 Absent)**

Provision under which the application is filed	Under Order 26 Rule 13 R/w Section 151 of CPC.
Relief Sought For	For appointment of Court Commissioner
The date on which the application is filed	21.04.2025
Number of the application	--
The date on which the objection is filed by the different opponents	12.06.2025
The date on which the orders was passed on the said application	02.07.2025



ORDER ON APPLICATIONS

This is an application filed by the petitioner/applicant under Order 26 Rules 13 R/w Section 151 of Code of Civil Procedure and under Section 54 of CPC for appointment of Court Commissioner in order to measure the landed property by way of preliminary decree in R.F.A. No.1489/2007 C/w R.F.A. No.17/2007 and RFA No.1196/2007.

2. On the other hand, the respondents have filed objection to the application.

3. Heard the learned counsels appearing for the parties and perused the material on record.

4. Now the following points arise for consideration of this Court:

- 1. Whether the applications filed by the applicant Under Order 26 Rule 13 R/w Section 151 of CPC and Section 54 of CPC are deserves to be allowed?**



2. To what order?

5. The findings of this Court on the above said point are as under:

Point No.1 : In the Affirmative

**Point No.2 : As per final order
For the following;**

REASONS

6. **Point No.1**:- The petitioner has filed a petition under order XX Rule 18 of CPC. The petitioner has filed the suit against the respondents seeking the relief of partition and separate possession of his share in the suit schedule property in OS No.75/2003 before Senior Civil Judge at Hunsur. The Hon'ble Court was pleased to partly decree the suit with respect to the schedule property except item No.8, 16 and 19 only for partition and separate possession of his half share in his father's share (1st respondent herein) in the suit schedule property by metes and bounds. But, the suit of the plaintiff/petitioner with



respect to suit schedule item No.8, 16 and 19 was dismissed in vide judgment and decree dated 17.03.2007.

7. Thereafter 1st respondent has preferred an appeal before the Hon'ble High Court of Karnataka in RFA No.1489/2007 clubbed with RFA No.17/2008 and C/w RFA No.1196/2007. The said appeals have been partly allowed and modified the judgement of trial court and passed decree in favour of petitioner i.e., $5 \times 16 \times \frac{1}{2} = 5/32$ share. As such the petitioner is entitled to get final decree to the above stated shares allotted by the Hon'ble High Court of Karnataka in vide judgment and decree dated 20.04.2023. Therefore, the appointment of commissioner is necessary to partition of estate of petitioner and defendant's share.

8. On the other hand the respondent filed objection to the application contending that the application filed by the petitioner is not maintainable. The contention taken by the respondents in objection statement has already



decided by the competent court. Hence, the objection of the respondent is over ruled.

9. As per the records, the petitioner has filed the suit for the relief of partition and separate possession with respect to suit schedule properties in original suit 75/2003. The preliminary decree passed in the said suit, the respondent No.1 challenged before the Hon'ble High court of Karnataka in RFA No 1489/2007 clubbed with R.F.A 17/2008 and C/w RFA 1196/2007. The said appeals have been partly allowed and modified the preliminary decree passed in O.S. No.75/2003. Further the record shows that the Respondent has preferred an Special Leave Petition No.3097-3099/2024 before the Hon'ble Apex Court of India. The said Special Leave petition was dismissed. Hence, the Petitioner has filed the petition for executing the preliminary decree.



10. The petitioner has filed an application under Order 26 Rule 13 R/w Section 151 of CPC in order to appointment of Court Commissioner i.e., Executive Engineer, K.R.Nagar to demarket the petition schedule property in item No.15 and 16(degree schedule item No.17 and 18) and cattle shed to effect the partition as per preliminary decree passed by the Hon'ble High Court of Karnataka in RFA No1489/2007 C/w RFA No.17/2007 and C/w RFA No.1196/2007 dated 20.04.2023.

11. Further, the petitioner has also filed an application under Section 54 of CPC to effect partition and separate possession with respect to the landed properties in item No.1 to 14 as per the preliminary decree by appointing court commissioner.

12. In order to draw a final decree for metes and bounds in accordance with the preliminary decree in favour of the petitioner/plaintiff as per the order dated



20.04.2023. Further it is seen that the item No.1 to 14 of the 'A' schedule properties are the agricultural properties. Therefore, the appointment of commissioner is necessary to partition of estate of plaintiff's share. **With these observations this Court answered point No.1 is in the Affirmative.**

13. **Point No.2:-** For the above discussion on point No.1, this court proceed to pass the following:

ORDER

The applications filed by the petitioner under Order 26 Rule 13 R/w Section 151 of CPC and under Section 54 of CPC are allowed.

The ADLR, Survey department, K.R.Nagar is appointed as a Court Commissioner for relating to the partition of share as per the preliminary decree and directed to the ADLR, Survey department, K.R.Nagar to effect partition to estate of the plaintiff and defendant's share pertaining to



the item No.1 to 14 in terms of preliminary decree and submit report.

The Executive Engineer, PWD, Sub Division, K.R.Nagar is appointed as a court commissioner to demarcate the petition schedule property in item No.15 and 16 (decree schedule item No.17 and 18) as per preliminary decree passed by the Hon'ble High Court of Karnataka in RFA No.1489/2007 C/w RFA No.17/2007 and C/w RFA No.1196/2007 dated 20.04.2023.

The Commissioner fees fixed for Rs.3,000/- each.

The petitioner is directed to produce the copy of the preliminary decree and deposit the commissioner fees.

Call on: 07.07.2025.

[Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in the Open Court on this the 02nd day of July, 2025]

**(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC,
K.R.NAGAR.**