

ORDER ON I.A. No. II

The petitioner has filed I.A. No. II under Order XXVI Rule 10 of the Code of Civil Procedure, 1908, seeking appointment of the Taluk Surveyor as Court Commissioner for measurement and division of the suit schedule Item Nos. 1 to 3, 6 and 7 in accordance with the preliminary decree.

The petitioner contends that the present Final Decree Proceedings have been initiated pursuant to the preliminary decree passed by this Court. Since the suit schedule properties are landed properties, their measurement and division by a Taluk Surveyor is necessary. It is therefore prayed that a Court Commissioner be appointed to measure and divide the suit schedule properties in terms of the preliminary decree.

Despite sufficient opportunities, the respondents have not filed any objections to the application.

Heard the learned counsel for the petitioner. Perused the application and the material available on record.

The following point arises for consideration:

Point

1. Whether the petitioner has made out sufficient grounds to allow I.A. No. I ?

My finding on the above point is in the **Affirmative**, for the following:

REASONS

6. Point No.1:- The present application has been filed in the Final Decree Proceedings seeking effectuation of the preliminary decree passed in O.S. No. 286/2011 by partitioning the suit schedule properties by metes and bounds.

For passing a final decree in a partition suit, the suit schedule properties are required to be measured, demarcated and divided in accordance with the shares declared under the preliminary decree. Such exercise necessarily requires the assistance of a competent Surveyor.

Though the petitioner has referred to an incorrect provision in the application, the same is not fatal. It is a settled principle of law that quoting a wrong provision does not disentitle a party from relief when the Court otherwise possesses the jurisdiction to grant the relief sought and the application is otherwise maintainable. The substance of the relief sought is for appointment of a Commissioner in a final decree proceeding for effecting partition by metes and bounds, which squarely falls within the scope of Order XXVI Rule 13 Code of Civil Procedure.

Since the respondents have not filed any objections and as appointment of a Court Commissioner is essential for effective implementation of the preliminary decree, this Court is satisfied that

sufficient grounds exist to appoint the Taluk Surveyor as Court Commissioner. Accordingly, Point No.1 is answered in the **Affirmative.**

ORDER

I.A. No.II filed by the petitioner u/Order XXVI Rule 13 of CPC is hereby **allowed.**

ADLR, Nanjangudu is appointed as Court commissioner to prepare a scheme of partition in respect of suit property in accordance with the supplementary preliminary decree.

Commissioner's fee is fixed at Rs.1,500/- tentatively.

Commissioner is directed to prepare a scheme of partition in respect of suit property in accordance with preliminary decree and to submit a report along with the neat sketch.

Issue commissioner's warrant if commissioner's fee and necessary PF paid.

Await commissioner's report by
17.08.2026

II Addl. Civil Judge & JMFC, Nanjangud