

Heard advocate for petitioner.

2. It is stated that, the present petition is filed praying to draw final decree in accordance with the

preliminary decree passed by this court in OS No.40/2016 dated 01.09.2020. It is stated that, inspite of the decree, the defendants have not come forward to make division of properties. Thus, the appointment of commissioner is just and necessary to make proper divisions. After filing of the petitioner, notices were issued to the respondents. Despite service of notice, respondents remained absent.

3. Heard the learned advocate for petitioners.

4. It is noticed that, the present final decree proceedings is initiated to draw final decree in terms of decree passed by this court in OS No.40/2016.

5. Hon'ble Apex Court in a decision reported in **(2009) 9 SCC 689** has held that *“once a court passes a preliminary decree, it is the duty of the court to ensure that the matter is referred to the Collector or a Commissioner for division unless the parties themselves agree as to the manner of division. This duty in the*

normal course has to be performed by the court itself as a continuation of the preliminary decree”.

6. Therefore, from the above referred provision of CPC and also the decision of Hon'ble Apex Court, there is a duty casted on this court to enforce the decree.

7. In order to give an end to the litigation and to draw a proper and effective final decree, appointment of commissioner is just and necessary. The court without the assistance of the technical person cannot draw proper and effective decree.

8. Therefore, looking to the above discussions and observations, I proceed to pass the following;

ORDER

The Assistant Executive Engineer, PWD, T.Narasipura is appointed as commissioner to make divisions in the suit property as per decree in OS No.40/2016.

The Assistant Executive Engineer, PWD, T.Narasipura is directed to visit the spot and prepare the sketch making total 3 divisions in the property. He shall make the divisions taking into consideration the nature of property, availability of road, comfortability of the portions to be suitable for the parties.

The Tahasildar is appointed as commissioner to conduct local inspection of suit landed properties and is directed and prepare the sketch making total 3 divisions in the properties. He shall make the divisions taking into consideration the nature of property, availability of road, comfortability of the portions to be suitable for the parties.

The commissioners shall express their opinions as to which of the portion is suitable for which of the parties.

The petitioners are directed to deposit the requisite survey charges, challan etc in the office of

commissioners and also shall produce necessary documents which are required for effective conducting of the commission work.

The commissioner is tentatively fixed at Rs.1,500/- each.

Office to issue commissioner warrants.

Await commission reports.

Call on 22/06/2022.

**Senior Civil Judge & JMFC,
T.Narasipura.**