

FDP 7/2009

ORDER

Heard, the present Final Decree Proceedings is filed by the petitioner/plaintiff – Guruvamma for drawing final decree on the basis of preliminary decree passed in O.S.538/2006 on 25.10.2008. The petitioner/plaintiff prays for referring the case to Thasildar/appoint Thasildar, Ramanagara to demarcate the suit schedule property as per preliminary decree dated: 25.10.2008 passed in O.S.538/2006 by filing I.A.No.I U/O.XXVI R.9 of C.P.C. In the said I.A., the petitioner/plaintiff has sworn and stated that the suit schedule property is an agricultural land, it can be measure, bifurcate and fix the boundaries by Taluka Surveyor who is competent person to do so.

The 5th defendant has filed objections contending that R.A.7/2009 is pending before the Hon'ble District and Sessions Judge, Ramanagara against the Judgement and Decree passed in O.S.538/2006. He has also moved an application for stay of operation of judgement and decree above said. The said application is still pending. So the I.A., filed U/O.XXVI R.9 of C.P.C., is premature. With these grounds prays to dismiss the application.

Heard, perused.

The point that arises for my consideration is as under:

“Whether the application is fit to be allowed?”

My answer to the above point is in the 'Affirmative' for the following:

REASONS

Copy of the Preliminary Decree passed in O.S.538/2006 is placed by plaintiff/petitioner before this Court. According to which the decree for partition and for separate possession in respect of half share in Sy.No.182/2 to an extent of 35 guntas out of 2 acres 26 guntas bounded on East by place belongs to lake, West and North by L. Pothegowda's lands and South by property connected to lake is on hand of the plaintiff/petitioner, the contention of the 5th defendant/respondent is that they have preferred R.A.7/2009 questioning the Judgement and preliminary decree in O.S.538/2006 and he has moved an application for stay for operation of judgement and preliminary decree. But no materials placed before the Court showing any stay application is pending. Admittedly, there is no stay as on today, so I have no other go except to allow application of the plaintiff/petitioner. More over now only by allowing this application this Court is taking assistance of Taluka Surveyor/Thasildar/Commissioner to see whether the suit schedule property is amenable for partition. So mere pendency of R.A. do not comes in the way of calling assistance of Commissioner to assist the Court to see whether the suit schedule property is amenable for partition. Section 54 of C.P.C., provides that the Taluka Surveyor/Thasildar is competent to demarcate the agricultural land for partition. As such I hold that the application is fit to be allowed. Hence, I answer the above point in the

‘Affirmative’ and I proceed to pass the following:

ORDER

Application is hereby allowed.

Issue warrant to the Thasildar/Taluka Surveyor/Commissioner to visit the spot, inspect and report regarding whether the suit schedule property is amenable for partition.

Report shall be within one month from the date of service of warrant since the matter is old.

Commissioner’s fee is fixed at Rs.2,000/-.

The petitioner/plaintiff shall deposit the Commissioner’s Fee within one week from this order, Office shall issue warrant soon after the Commissioner’s Fee and Process Fee are paid.

Prl. Sr. Civil Judge & C.J.M.,
Ramanagara.