

Orders on IA No.III filed under Section 54
read with Section 151 of CPC

Applicant/petitioner filed the application to appoint the Tahasildar/the Taluk Surveyor, Ramanagara as Court Commissioner for effecting partition of applicant's 1/5th share in petition "A" and "B" schedule properties by taking into consideration locality, value and accessibility.

2. In the affidavit annexed to the application, applicant prayed to read the petition as part and parcel of the affidavit and submitted that, the suit instituted by her in O.S. No.54/2006 for partition of schedule properties was decreed. However, claim of the applicant over "C" schedule property was dismissed and her 1/5th right was declared over suit "A" and "B" properties by excluding 0.006 guntas or 35'x20' land on the West of "B" schedule property, out of 1 acre 3 guntas, excluding 3 guntas of "B" kharab land, which was alienated by the mother of the applicant in favour of Sri.K.Ramamurthy. That the mother of the applicant had conveyed 1.5 guntas each to the applicant and the respondent No.10 in "B" schedule property. Therefore, the said 3 guntas of land is not available for partition including 20' road on the Western side. Therefore, only 36.5 guntas of land is available for partition.

3. That as per the preliminary decree passed in the suit, respondents No.1, 5, 9, applicant and LR's of the deceased respondent No.10 are entitled for 1/5th share each. Hence, the application.

4. Opponent/respondent No.1 filed statement of objections by way of reply and prayed to peruse the statement of objections dated

04.12.2017 as part of the present objections. According to the respondent No.1 an additional preliminary decree has to be drawn in respect of his 1/5th share. That the construction by the 1st respondent in view of the orders passed by this court is stopped subject to the 1st respondent seeking his 1/5th share separately by drawing a fresh additional preliminary decree. That without declaration of shares of other respondents the present application cannot be considered.

5. Case of the respondent No.1 is that before sale of property to K.Ramamurthy respondent No.9 had constructed a house without valid title. The said portion of land had not been sold by Byatamma. The portion of the house shall be included in the final decree for partition among the 5 sharers. That Ramamurthy had sold property on 22.06.2004 to the 9th respondent, in turn the said property was sold to Smt.Saraswathi by the 9th respondent and she is not a party to the instant proceedings.

In the final decree proceedings the property among all co-sharers has to be divided equally and the dispute in question needs to be adjudicated between the parties ultimately without any further litigation. That the application may be kept pending until drawing of fresh preliminary decree declaring the shares of respondents No.1, 5, 9 and LRs of the deceased respondent No.10. If the application is allowed without considering the facts in issue the respondent No.1 and the other co-sharers will suffer hardship. Hence, the respondent No.1 prayed to defer the application until shares of other respondents are declared by drawing fresh preliminary decree by this court.

6. Opponent/respondent No.9 filed statement of objections which was adopted by respondents No.5 and 8. Opponent/respondent No.5 filed statement of objections. Respondent No.6 adopted the statement of objections filed by the respondent No.5.

According to the respondent No.9 there are mistakes in the boundaries and the extent of schedule properties shown in O.S. No.54/2006. That the boundaries of "B" schedule property on the North and South are interchanged. The total extent of the "B" schedule property is 1.03 acres. Since 0.0.3 gunta is "B" kharab land only 1 acre is available for partition. That the mother of respondents No.1, 5, 9, 10 and the petitioner had sold 0.3.006 guntas and only 0.36.08 guntas of land is available for partition. Therefore, respondent No.9 prayed to direct the Taluk Surveyor to measure the property as prayed for by the petitioner by rectifying the boundaries and the extent of land in O.S. No.54/2006.

7. The statement of objections filed by the respondent No.5 is in similar line with the statement of objections filed by the respondent No.9. Apart from that respondent No.5 contended that respondent No.9 has already constructed a house in the "B" schedule property and he does not require any house. That the boundaries and the extent of the property in the original suit have to be rectified. Therefore, respondent No.5 prayed for issuing direction to the Taluk Surveyor to measure the properties as sought for by the petitioner.

8. Heard.

9. The learned counsel for the respondent No.1 furnished written arguments.

10. The present proceedings is the continuation of OS.54/2006. The petitioner has sought for appointment of Court Commissioner for effecting partition of her 1/5th share in the schedule "A" and "B" properties by excluding 0.006 guntas in "B" schedule property.

11. The respondent No.5, 6, 8 and 9 though filed statement of objections did not object for appointment of Court Commissioner. But, their contention is that, as sought for by the petitioner the properties may be measured by excluding certain extent of land in the "B" schedule property.

12. The respondent No.1 however submitted that, separate preliminary decrees have to be drawn declaring shares of respondents No.1, 5, 9 and LR's of the respondent No.10. He has also contended that, there is a house property which has been sold in favour of Smt.Saraswathi and she is not a party to the proceedings. In this regard, either the petitioner or other respondents have not raised any contentions.

As regard drawing of fresh preliminary decree is concerned, the Court in the judgment passed in OS.54/2006 observed that, plaintiff, defendants No.1,5 and 9 are entitled for equal share and share of defendant No.10 who has died during the pendency of the suit is succeeded by defendants No.10(a) and (b). Therefore, though in the operative portion in the judgment share of the respondents has not been declared, the Court has observed in respect of share of the respondents. Therefore, separate preliminary decree need not be drawn and if the respondents pay Court fee for their shares, then shares of the respondents can be demarcated and allotted to them.

Moreover, respondent No.1 has not stated that, the Court Commissioner should not be appointed. According to him, until shares of respondents No.1, 5, 9 and LR's of respondent No.10 are declared the application may be kept pending. But, as stated above, when shares of the parties to the suit have been defined, once again a preliminary decree need not be drawn. Therefore, it is necessary to appoint Court Commissioner for demarcation of 1/5th shares of each of petitioner, respondents No.1, 5, 9 and

LR's of respondent No.10 in the petition "A" and "B" schedule properties..
Hence, the following:

ORDER

IA No.III filed by the applicant/petitioner under
Section 54 read with Section 151 of CPC., is allowed.

The Taluk Surveyor attached to the office of the
Tahasildar Ramanagara Taluk is appointed as the
Court Commissioner for measuring and bifurcating the
petition "A" and "B" schedule properties.

**Addl. Senior Civil Judge & JMFC.,
Ramanagara.**