

**19.08.2023**

D.Hr.:- Sri. D.H.M. Adv.,

J.Dr:- Absent

For orders on I.A.No.II

**ORDERS ON I.A.No.II**

The decree holder has filed I.A.No.II U/O. XXVI R.9 R/w Sec.151 of CPC, requesting to appoint Court commissioner i.e., Sri. H.N.S. Advocate, Magadi, as Court Commissioner to execute registered sale deed in respect of suit schedule property i.e., land bearing Sy.No.95/5, measuring to an extent of 0.20 guntas situated at Cholanayakanahalli Village, Bangalore South Taluk in favour of decree holder.

In support of the application the decree holder has filed his sworn affidavit stating that, the decree holder has filed suit in O.S. No.202/2005 for the relief of specific performance of contract and the same was decreed on 07.08.2013. The J.Dr., not come forward to execute registered sale deed in favour of decree holder, hence it is just and necessary to appoint the practicing advocate as court commissioner to execute the sale deed in

favour of decree holder. Hence, prays to allow the application.

The J.Dr., has not filed objection to application.

Heard and perused the entire case records.

The following point arises for my consideration;

**Whether the applicant/DHr has made out sufficient grounds for appointment of Court commissioner as prayed for?**

My answer to the above point is in the affirmative for the following;

**REASONS**

Admittedly, the D.H.R. has filed suit in O.S.No.202/2005 for the relief of specific performance of contract and said suit was decreed in favour of plaintiff on 07.08.2013 directing the J.Dr., to execute the registered sale deed in favour of plaintiff within 15 days from the date of decree by receiving balance sale consideration amount of Rs.15,000/-. If the J.Dr. failed to execute the registered sale deed, the D.Hr., is at liberty to get the registered sale deed from the process of the court. Then after the J.Drs., have preferred appeal before the Hon'ble Prl. Sr. Civil Judge & JMFC., Magadi in R.A.No.41/2017, wherein the Hon'ble Sr. Civil Judge confirmed the Judgement in O.S.No.202/2005 and dismissed the appeal preferred by the J.Drs.

The J.Drs., have filed objection by denying the averments of petition. On perusal of objection it reveals that, the J.Drs., have not preferred any appeal as per the order of Hon'ble Sr. Civil Judge, Magadi. Therefore, looking to the facts and circumstances of the case, I have no reasons to disbelieve the contents of the affidavit filed in support of IA No.II, hence I am of the opinion that, it is just and proper to appoint Court commissioner to execute the registered sale deed in favour of D.Hr.

Hence, I answer the point raised for consideration in the affirmative and I proceed to pass the following;

**ORDER**

The application filed by D.Hr. U/O.XXVI R.9 R/w. Sec.151 of CPC is hereby allowed.

Sri. H. Narayanswamy, Advocate, Magadi appointed as Court Commissioner to execute the registered sale deed before the Sub-Registrar, Magadi in favour of D.Hr.

The Court commissioner fee of Rs.2,000/ is fixed. This fee is to be paid by the D.Hr.

Issue commissioner warrant, if commissioner fee is deposited and draft furnished and if balance sale consideration amount deposited by the D.Hr.

Await Commissioner report,  
Call on 12-09-2023.

**Prl. Civil Judge and JMFC,  
Magadi.**