



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
AT: MAGADI.

Present :Sri. SHRINIVASA B.A.L.,LL.M.,
Prl. Civil Judge & J.M.F.C.,
Magadi.

Dated: This the 05th day of March, 2025

F.D.P.No.15/2022

Petitioner: Smt.Venkatalakshamma,
D/o Narasimhaiah @ Kariyanna,
W/o Puttegowda,
Aged about 50 years,
Residing at Motaganahalli,
Soluru Hobli, Magadi Taluk.

(By Sri.S.B., Adv.)

V/s

Respondents : 1. Sri.Narasimhaiah @ Kariyanna,
S/o Late Puttamaraiah,
Aged about 80 years,

2. Smt.Mayamma,
W/o Narasimhaiah @ Kariyanna,
Aged about 70 years,

3. Smt.Nanjamma,
W/o Narasimhaiah @ Kariyanna,
Aged about 65 years,



4. Smt.Gangamma,
D/o Narasimhaiah @ Kaiyanna,
Major,
Residing at Muddanapalya,
Tavarekere Hobli,
Bengaluru South Taluk.
5. Smt.Sakamma,
D/o Narasimhaiah @ Kariyanna,
Major,
6. Sir.Murthy,
S/o Narasimhaiah @ Kariyanna,
Major,
7. Sri.Puttaraju,
S/o Narasimhaiah @ Kariyanna,
Aged about 35 years,
8. Smt.Nagamma,
D/o Narasimhaiah @ Kariyanna,
Aged about 34 years,

The respondent No.1 to 3 and 5 to 8
are residing at Motaganahalli
Dhake, Mekalayanapalya,
Soluru Hobli,
Magadi Taluk, Ramanagara District.

**(Respondent No.1, 3, 6 and 7
represented by Sri.M.R.R,
Advocate)
(Respondent No.2, 4 and 5 are
absent)**

**ORDER**

The petitioner filed present petition Under Section 54 of CPC for drawing of final decree, contending that, the petitioner filed suit in O.S.No.136/2005 for the relief of partition and separate possession. The petitioner preferred appeal before the Hon'ble Senior Civil Judge and JMFC for modification of share in RA No.20/2018 and the Hon'ble Senior Civil Judge and JMFC, Magadi modified the share of plaintiff as half share instead of 1/3rd share in the suit schedule property. Hence, petitioner filed present petition. After filing of petition the notice severed to the respondents and the respondents appeared through their counsel. After appearance of respondents, the Taluk Surveyor appointer as court commissioner and accordingly commissioner filed report. The respondent No.1, 3, 6 and 7 counsel filed objection on commissioner report stating the commissioner not obtained survey records in respect of suit schedule property and simply submitted the report without measuring the property at spot. The commissioner taken the signature of petitioner and her mother and commissioner not tried to obtain the signature of respondents at the spot. The commissioner without looking the decree submitted his report stating the court has ordered to allot the northern side of the suit schedule property to the petitioner. The commissioner not done any commissioner work hence, the respondent No.1 given petition to the DDLR, Magadi on 25.09.2023. The commissioner has not followed the court order



and without enquiry filed report with an malafide intention. Hence, prays to reject the report.

2. After objection the commissioner examined himself as CW-1 and got marked documents as Ex.C.1 to 8.

3. I have heard arguments by counsel for the petitioner and respondent No.1, 3, 6 and 7.

4. The following points arises for my consideration :

1. Whether the report submitted by the commissioner is deserves to be allowed?

2. What order ?

5. My answers to the above points as follows

Point No.1. In the '**Negative**.'

Point No.2. As per final order
for the following:

REASONS

6. **Point No.1**: I have carefully gone through the records, the petitioner has filed present petition for drawing of final decree as



per order of Hon'ble Senior Civil Judge, Magadi in RA No.20/2018 and which is passed preliminary decree by this court. After filing of petition, the respondent No.1, 3, 6 and 7 appeared. After appearance the Taluk Surveyor appointed as commissioner to suggest the scheme of partition and accordingly he filed report along with survey sketch and postal receipts.

7. The contention of the respondent No.1, 3, 6 and 7 is that, the commissioner not issued notice to all the parties and the commissioner filed report with an instigation of petitioner stating the court has ordered to allot northern side of suit schedule property to the petitioner. The commissioner without visiting to the spot preferred report and filed the same report before the court. Hence, prays to reject the commissioner and issue fresh commissioner warrant.

8. The court commissioner i.e., Taluk Surveyor, Magadi examined as CW-1 and got marked documents as Ex.C.1 to 8. Ex.C.1 and 2 are the notice, Ex.C.3 to 5 are the postal receipts, Ex.C.6 to 8 are the mahazar and sketch. The commissioner in his chief examination stated he had issued notice to all the parties to present at spot on 22.09.2023 and accordingly he conducted survey and at the time of survey the petitioners and respondents were present but, the respondents without signature to the



statement they went. I have carefully gone through the Ex.C.1 to 5 which are notice and postal receipts, in the Ex.C.1 and 2 the commissioner not stated anything on which date he will be present at the spot to conduct survey and on perusal of Ex.C.3 to 5 it clearly shows that, the said postal receipts belongs to Nanjamma, Gangamma and Sharadhamma. On perusal of cause title of petitioner it clearly shows that, the Sharadhamma is not party to the suit and the commissioner not filed postal receipts of petitioner and other respondents to show that, he had issued notice to all the parties. The CW-1 in his cross examination stated that, the postal receipts of other respondents were misplaced and by oversight he has produced the postal receipts of Sharadhamma who is not a party to a suit and the commissioner conducted survey on 22.09.2023 and he had issued notice and as per Ex.C.3 and 4 the CW-1 issued notice on 20.09.2023 it means two days before commissioner issued notice and he had not given sufficient time to parties to appear before spot at the time of conducting survey. The CW-1 in his cross examination clearly stated that, “ಎಷ್ಟು ದಿನಗಳ ಮುಂಚಿತವಾಗಿ ನೋಟೀಸ್ ಕೇಡಬೇಕು ಎಂದು ನಿಯಮ ಇದೆಯೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಹೌದು 7 ದಿನಗಳ ಮುಂಚಿತವಾಗಿ ನೋಟೀಸ್ ಕೊಡಬೇಕು ಎಂದು ನಿಯಮ ಇದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. As per the admission of CW-1/commissioner itself is very clear that, the notice should be issued before 7 days to the parties but, on perusal of Ex.C.3 and 4 and 8 it clearly shows that, the commissioner issued notice on 20.09.2023 and he conducted survey on 22.09.2023 hence, the commissioner not followed due process of law. Further the CW-1 stated that, there is order from



the court to allot northern side of block No.1 to the petitioner. I have carefully gone through the orders, there is direction by this court to the commissioner to allot block No.1 of northern side property to the petitioner. On perusal of report it clearly shows that, the commissioner not filed report accordance with law and not followed the due process of law at the time of preparing report. Hence, perusal of report it clearly shows that, the report submitted by the commissioner is deserved to be reject. Accordingly, I answer point No.1 in **Negative**.

9. **Point No.2:** In view of the above reason, I proceed to pass the following:

ORDER

The report submitted by the commissioner is hereby rejected.

Hereby directed the court Commissioner to conduct survey with following due process of law and further hereby directed to suggest a scheme for partition of suit schedule property in tune the share allotted as per the judgment and decree of RA No.20/2018.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **05th day of March, 2025.**)

(Shrinivasa K.R)
Prl. Civil Judge & J.M.F.C.,
Magadi.



ANNEXURES

Witnesses examined for the Petitioners:

-Nil-

Documents exhibited by the Peittioners:

-Nil-

Witnesses examined for the Respondents:

- Nil -

Documents exhibited by the Respondents:

- Nil -

Witnesses examined for the Court Commissioner:

CW.1 : Sri.H.M.Venkataraju.

Documents exhibited by the Court Commissioner:

Ex.C.1 & 2 : Notice.

Ex.C.3-5 : Postal receipts.

Ex.C.6 : Report.

Ex.C.7 : Sketch.

Ex.C.8 : Mahazar.

(Shrinivasa K.R)
Prl. Civil Judge & J.M.F.C.,
Magadi.