

ORDERS ON MAIN PETITION

1. This Execution Petition is instituted by the decree holders seeking to appoint Tahasildar for bifurcation of RTC and to handover the separate possession to the decree holders as per their respective shares based on final decree passed by this Court in FDP NO. 04/2020.

2. It is stated in the petition that the father of the decree holders had filed a suit for partition vide O.S.NO.133/1988 which came to be decreed and after death of father, decree holders being their legal heirs have initiated final decree proceedings vide FDP NO. 4/2020 which was amicably settled by the parties before National Lokadalath by filing joint compromise petition. Hence, on the basis of the final decree, sought to send the records to execute the final decree.

3. Per contra, the objections came to be filed on behalf of JDR NO.1 resitting the said petition as not maintainable by contending that the Sl.No.2 of the property which was the subject matter of original suit and FDP which is the building No.3 of Bhavikeri Gram Panchayat has not been included in the instant case and without including the said property, the instant case cannot be sustainable and this Court has declared

6/15th share to this judgment debtor in the SL.No.2 Of the suit property of O.S.No.133/1998 and all the parties have agreed for the settlement arrived among the parties in FDP NO.4/2020 before National Lok Adalath, as such it is sought to appoint a court commissioner to divide 6/15th share in the house property and further stated that this judgment debtor has no objection so far as Sl.No.1 of the suit property is concerned. Hence, prays to include the Sl.No.2 of the suit property and prays to dismiss the petition filed by the judgment debtors.

4. Heard the respective counsels appearing for the decree holders and the judgment debtor No.1. Perused the entire materials on record.

5. Having heard the submissions made at Bar and having gone through the materials on record, it is undisputed fact that father of DHR filed a suit for partition vide OS NO. 113/1198 in respect of landed and house property which came to be decreed and accordingly, decree holders initiated final decree proceedings vide FDP NO.4/2020 which came to be settled before the National LokAdalath by filing joint compromise petition and based on the said final decree, the instant petition is filed by the decree holders to execute the final decree.

6. The decree holders have also produced certified copies of order passed in FDP NO. 4/2020 and also the joint compromise petition, PT sheet and watap takta. It is an admitted fact that landed property and the house property are the subject matter of the original suit and FDP. However, there is no dispute in respect of the landed property but the main contention of the JDR No.1 is that house property is not included, as such the said petition cannot be sustainable. No doubt, the decree holders have not included the house property but the materials on record discloses that only landed property was divided as per the settlement arrived at between the parties and on perusal of the joint compromise petition filed by all the parties, there is no reference in respect of the house property and further it is clearly evident that final decree is drawn only in respect of the landed property bearing Sy.No.479A/3B of Bhavikeri Village in Ankola Taluk and no material is placed on record to show before the Court that the parties have also arrived at settlement in respect of house property and further it discloses that the parties have settled the matter based upon the PT sheet and watap takta prepared in respect of landed property and accordingly final decree is drawn. There is no division of house property as observed above and as on today, none of the parties have challenged the final decree. It

appears to this Court that the JDR No.1 is indirectly challenging the final decree disposed before the National Lok Adalath in the instant petition which is not sustainable. Because it is well settled law that executing court cannot go beyond the decree. If the JDR NO.1 had any grievance in respect of the house property, then he ought to have filed the writ petition challenging the final decree which came to be disposed of before National Lok Adalath. Admittedly, there is no division of the house property and also no final decree came to be drawn in respect of the house property. When there is no final decree in respect of the house property, then the question of including house property does not arise at all and it cannot be included in the execution petition for division as argued by the counsel for the JDR No.1. What can be executed is a final decree and not a preliminary decree, unless and until final decree is a part of the preliminary decree. Although, final decree may be required to be duly stamped, or the same may not have anything to do for the purpose of computing the period of limitation, the preliminary decree as such cannot be put to execution, without drawing a final decree proceedings. In the present case also, no final decree is drawn in respect of the house property and the said house property cannot be included and send the same for division in execution proceedings. Hence, the contention taken by the JDR

NO.1 in the objections sans merit. Therefore, **this Court proceeds to pass the following -**

ORDER

The objections filed on behalf of JDR NO.1 is hereby over ruled. Accordingly, refer the matter to Tahsildar, Ankola for effecting necessary mutation entries and issue possession warrant as per the FDP NO.4-2020. P.F is paid on 25/03/2025.

Sd/-

C/c Civil Judge, Ankola.