

## **FDP No.04/2014**

The petitioners have filed this petition for division of suit property as per the preliminary decree in OS No.5/2019 by metes and bounds.

After appearance of the respondent this court has appointed Sri. D.H.N advocate as court commissioner to divide the schedule properties as per the preliminary decree. Then on 30-07-2024, the court commissioner has filed his report. The counsel for the respondent No.1 to 4 has filed objection to the commissioner report. Initially the counsel for the petitioners has submitted no objection to the commissioner's report on 30-07-2024. But on 14-08-2024, the petitioners counsel also filed objection to the commissioner's report.

In the objection, the petitioners counsels stated that, the commissioner's report and sketch submitted by the Taluk Surveyor is incomplete. The Taluk Surveyor has not conducted the survey in the suit

schedule property. Hence, prays to re-survey the schedule property.

The counsel for the respondent No.1 to 4 has filed objection to commissioner's report and stated that, the sketch and vatap thakthe prepared by the surveyor is not according to the material conditions. The portion allotted to the respondents i.e., the western side of the block-I living a small narrow canal type lane which is not useful to the respondents and there is road in the western side. If the respondents built compound wall in their portion, the road will be closed to the persons who are in block-II. In the south side of block-I, there is vacant land and same can be allotted to the respondents. Further it is stated that, the respondents have 1/3<sup>rd</sup> right in the house and well which situated in the schedule property. But same was allotted to the share of petitioner No.2. Hence, petitioner No.2 may directed to give market value of the said house

and well, to the respondents according to their 1/ 3<sup>rd</sup> right. Hence, prays to reject the commissioner's report.

I have perused the survey report and sketch. Even in the survey report there is no valuation of the suit properties are mentioned. It is the duty of the court commissioner to value the properties by considering its fertility access to main road, improvements therein etc. in the case on hand, the court commissioner has not considered all these aspects at the time of division of the properties. Further in the suit B schedule property the respondents are also have 1/3<sup>rd</sup> share, but same is not considered by the court commissioner. Therefore the scheme of partition suggested by the court commissioner is not equitable partition and same is not in accordance with the preliminary decree. Hence I proceed to pass following:

**ORDER**

The commissioner's report submitted by the court commissioner is hereby rejected.

For hearing on appointment fresh court commissioner.

By 09.09.2024.

**Sd/-**

Addl. Civil Judge and  
J.M.F.C. Bhatkal.