

KAUK510001662014



ORDER ON I.A NO.21

The respondent no.1(a) to (h) filed I.A No.21 under Section 151 of C.P.C., praying to set aside the order dated 11.04.2025 as per hearing on I.A No.20 in the interest of justice and equity.

In the affidavit, the respondent no.1(C) (ii) stated that, suit properties are self acquired properties of his grandfather and they are in possession and cultivation of the same. The father of petitioners filed O.S No.97/1982 for partition and separate possession, said suit was decreed. Aggrieved by the same, R.A No.66/2006 was filed same was dismissed on 26.11.2013. Aggrieved by the same, RSA No.100105/2014 was filed before the Hon'ble High Court of Karnataka, Dharwad Bench and the same is pending. The Court Commissioner was appointed to measure and demarcate the suit properties as per preliminary decree but, RSA is pending, same was conveyed to the Court Commissioner and Court Commissioner returned without doing his work. They are under impression that, Commissioner

work is not done in the case but, recently, he came to know that, Commissioner has submitted report and he has filed objections to the Commissioner report. There are lot of lacunas in the commissioner work and report and same must be brought before the Court. Before passing order on present petition. Therefore, it is necessary to call the Court Commissioner for evidence. On 05.04.2025, LRs of respondent no.2 and 3 have filed application under Section 151 of C.P.C., and the petitioners have filed objections to the same on 11.04.2025 and the matter was posted for hearing on the said I.A. Now he felt that filing of his objections is necessary to get the share in the suit property. Hence, it is just and necessary to permit him to file objections to the said I.A for proper adjudication and distribution of the share. With these contentions, prayed to allow the application and set aside the order as for hearing on I.A No.20.

The counsel for the petitioners submitted to allow I.A No.21 on costs.

Heard counsel for respondent no.1(a) to (h) and petitioners.

On perusal of order-sheet, on 05.04.2025, advocate Sri. GGG, filed I.A No.20 and on 11.04.2025, counsel for

petitioners filed objections to I.A No.20, on that day, advocate for respondent no.1(a) to (h) was absent and the matter was posted for hearing on I.A No.20. On 20.06.2025, the counsel for respondent no.1(a) to (h) filed I.A No.21 along with objections to I.A No.20. On perusal of order dated 11.04.2025, the Court has not taken objections of respondent no.1(a) to (h) to I.A.No.20 as not filed but, only posted the matter for hearing on I.A No.20 without providing opportunity to respondent no.1(a) to (h) to file objections to I.A No.20. Therefore, question of setting aside the order dated 11.04.2025 does not arise, as there is no such order. Under these circumstances, I.A No.21 disposed.

Sd/-
**Civil Judge & JMFC.,
Haliyal**

(Order on I.A No.20 pronounced in the Open Court, vide separately)

ORDER

I.A No.20 filed by the respondent no.2(b), 2(c), 2(d), 3(a), 3(b), 3(d)(ii) under Section 151 of C.P.C., is hereby rejected on cost of Rs.5,000/-.

Sd/-
**Civil Judge & JMFC.,
Haliyal**

Perused Order-sheet and records on 19.12.2024, this Court allowed I.A No.15 by appointing City Surveyor, Haliyal as Court Commissioner to prepare scheme of partition in respect of house properties which are mentioned in I.A No.15. The Court also fixed time bound for the Court Commissioner to carry out commission work but, in the meantime, the respondent no.1 died and petitioners filed applications to bring his legal heirs on record. Considering the circumstances, this Court passed an order and kept the order on I.A No.15 dated 19.12.2024 in abeyance stating that, the fresh dates will be provided to the parties for compliance once I.A No.19 is decided. Now I.A No.19 decided and legal heirs of deceased respondent no.1 are brought on record. Therefore, it is proper to issue fresh commission warrant by fixing dates. Therefore, office is directed to comply order on I.A No.15 dated 19.12.2024. The City Surveyor, Haliyal has directed to prepare scheme of partition in respect of house properties mentioned in I.A No.15.

The Chief Officer, TMC, Haliyal is directed to assist Court Commissioner to prepare scheme of partition in all the ways. Both parties are at liberty to file their memo of instructions in the office on or before

1.9.2025. The fees of the Court Commissioner i.e., Rs.2,500/- is payable on or before 1.9.2025. The petitioners are directed to furnish documents as per order dated 19.12.2025 and the Court Commissioner shall carry out the commission work on or before 25.09.2025 as per the order of I.A No.15 dated 19.12.2024.

Office is hereby directed to issue commission warrant on 2.9.2025 along with memo of instructions and documents furnished by the parties without fail.

Sd/-
Civil Judge & JMFC.,
Haliyal