

Orders on IA No.III

The counsel for petitioners has filed application U/O 26 Rule 9 R/w Sec-151 of CPC for appointment of court commissioner.

2. In the affidavit filed in support of the application it is stated that, this court has decreed the suit filed by the petitioner in OS No.34/2019 allotting 1/4th share to the petitioners. It is necessary to appoint ADLR Haliyal as a court commissioner to measure the Sy No.176/B27 (Old Sy No.176B/9) measuring 04 acres 00 guntas situated at Hosvatnal, Tq: Haliyal, Dist: Uttar Kannada and to submit the report before this court for adjudicating the matter immediately. Petitioners are ready to bear the expenses of the court commissioner. If the application is allowed no loss or injustice would be caused to the other side and if the application is not allowed the petitioners will be put to much injustice. Hence, prays to allow the application.

3. On the other hand the counsel for R.5 has filed objection to the above said application stating that, the final decree proceedings in its present form is not maintainable hence the same is liable to be dismissed. The preliminary decree passed by this court needs correction in as much as distribution of share among the parties. The court ought to have allotted the share equally as $\frac{1}{4}$ share to the all 04 parties being the coparcernors of Hindu Joint Family, on the other hand by its typographical blunder and clerical oversight court has mentioned the share as $\frac{3}{4}$ to each of the parts claiming equal $\frac{1}{4}$ share in the suit properties. There is an error in the last para of the judgment as well as decree which needs correction and needs to give notice to all the defendants for bringing correction in the preliminary decree. Hence, prays to reject the application.

4. Heard arguments on both sides.

5. The following points arise for my consideration.

1. Whether the application filed U/O 26 Rule 9 R/w Sec-151 of CPC deserves to be allowed?

2. What order?

6. My findings on the above points are as under

1. In the Affirmative

2. As per final order for the following reasons.

REASONS

7. **Point No.1:** The counsel for petitioners has filed application for appointment of court commissioner to effect partition in suit schedule property as per preliminary decree. The said application is opposed by the counsel for R.5 stating that, there are typographical blunder and clerical mistakes in the judgment which need corrections. Hence prays to reject the application.

8. Perused case papers, the present petition is filed by the petitioners against the respondents for drawing up final decree as per preliminary decree. Since the suit schedule property is agricultural land ADLR is competent person effect partition in suit schedule property. It is the contention of the R.5 that there are typographical blunder and clerical mistakes in judgment which needs correction. If at all there are any typographical or clerical mistakes in the judgment the respondent No.5 or the petitioner would have filed application for correction of the said typographical or clerical mistakes. But till today neither the R.5 nor the petitioners have filed such application before this court. Further R.5 has not produced any document to show that he has challenged the judgment and decree passed by this court in OS No.34/2019 and also not produced any stay order of the appellate court for not drawing up the final decree. It seems that R.5 has taken false contention in his objection in respect of typographical and clerical mistakes in judgment. If court commissioner is appointed to effect partition in suit schedule property then no harm will be caused to the respondents. Hence I answered point No.1 in the Affirmative.

9. **Point No.2:** In view of the aforesaid reasons, I proceed to pass the following ;

:ORDER :

IA No.III filed by counsel for petitioner U/O 26 Rule 9 R/w Sec-151 of CPC is hereby allowed.

ADLR Haliyal is appointed as court commissioner to effect partition in suit schedule property.

Commissioner fee is fixed at Rs.2000/-.

Issue court commissioner warrant after depositing commissioner fees

R/by 01-03-2025.

Sd/-

Senior Civil Judge Haliyal