

IN THE COURT OF SENIOR CIVIL JUDGE, HALIYAL.

Present: Smt. Shilpa. H.A.,
B.A., LL.B.,
Senior Civil Judge, Haliyal.

FDP No.7/2018

Dated this 10th day of July 2019

Petitioner :
(Ori.plaintiff)

Smt.Suja, W/o.Thamas Mathew
Age: 56 years, Occ:Household.
R/o.Panchaxari Nagar, 5th Cross Gadag.

(By: Sri.R.K.K/C.B.C/B.V.R., Advocate)

//Vs//

Respondents :
(Ori.defendants)

1. Smt.Saju, W/o.Andrew Gracious
Age:55 years, Occ:Household
R/o.C/o.Andrew Gracious
Secirotu Director(Office)
Central Stage Mal, Poket 'J'
Sector 18 NMC, Noida, U.P
2. Suma Oommen,
Age: 54 years, Occ:Household,
R/o.IA/730, Prakash Bhavan
Raghavendra Math Marg C.

- Dandeli, Dist:Uttara Kannada
3. Soma Francies Andrade
Age: 53 years, Occ:Household & Business
R/o.Legend 2, E 102
1st Floor Kandarpad, Off. New
Link Road, Near Zen Park
Dashisar West Mumbai.
4. Jajji Oommen, S/o.V.A.Oommen
Age: 48 years, Occ:Private Service,
R/o.A-I, Sharanya Residency, S.G.Palya
C.V.Raman Nagar, Bangalore.

(R1 & 2 by Smt.S.R.G.,Adv. & R.4 Exparte)

ORDER

The petitioner has filed this petition U/O.20 Rule 18 R/w.Sec.151 of C.P.C. for appointment of court commissioner for division of her 1/5th share as per preliminary decree and after receiving the commissioner report prays to draw final decree with cost.

2. The brief facts of the case of the petitioners are that

Petitioner has filed a suit for partition and separate possession seeking her 1/5th share in O.S.No.41/2017 before this court, the said suit came to be partly decree on 21-08-2018

awarding her 1/5th share in the suit properties, the division is not done as per preliminary decree till today. The petitioner has requested the respondents to effect the division in the petition properties. But, the respondents are avoiding the division by one or the other pretext. Hence, the petitioner is constrained to file this petition for drawing up the final decree.

3. In pursuance of notice, respondent No.2 & 3 have appeared before the court through their counsel and submitted no objection to the main petition. In spite of service of notice to respondent No.1 & 4, they have remained absent. Hence, they are placed *exparte*. Thereafter, petitioner has filed I.A for appointment of Court Commissioner to effect partition. Since, respondent No.2 & 3 have submitted no objection and other respondents are placed *exparte*, the said I.A was allowed. City Surveyor Dandeli was appointed as commissioner to effect partition. The court commissioner has dully executed the commission work and submitted report. Both parties have submitted no objection to the commission report and prays to accept the commission report and passed final decree.

4. Perused the entire case file and documents along with judgment and decree. On its perusal, it reveals that

petitioner/plaintiff has filed the suit for partition and separate possession seeking her 1/5th share in the suit properties with mense properties. None of the parties have preferred any appeal on the said judgment and decree, the respondent No.2 and 3 have appeared before the court and submitted no objection to the main petition and other respondents have remained absent and not contested the petition. The commissioner has issued notice to the parties and divided the suit properties as per preliminary decree and submitted sketch with the extent of each share along with the statement of the parties and witnesses. The said report is not objected by both the parties, the commissioner has properly done the commission work and submitted report. Since, the judgment and decree dated 21-8-2018 has attained its finality and no appeal is pending before the appellate court and parties have also accepted the commission report, the petition deserves to be allowed. Hence, I proceed to pass the following:

ORDER

**Petition filed by the petitioner U/o.20
Rule 18 R/w.Sec.151 of CPC is hereby
allowed.**

The Commissioner report dated 28-6-2009 is hereby accepted.

Draw final decree as per commission report.

Parties to bear their own cost.

(Dictated to the stenographer, transcribed and typed by him and corrected and pronounced by me in the open court on this 10th day of July 2019)

(Shilpa H.A)
Senior Civil Judge, Haliyal.

