FDP 35/2019

The petitioner filed the present petition for effecting division of the properties in accordance with the terms of the preliminary decree by appointment of court commissioner.

Respondent appeared through the counsel and filed objection to the petition. In the objection, the respondent contended that petitioner does not belong to the family of respondent and decree is obtained by furnishing wrong information. The petitioner is having no right over the properties and if the properties are demarcated by appointment of court commissioner then respondent will be put to irreparable injury. Based on the said grounds, respondent sought for rejection of petition

Heard the counsel for the petitioner. Respondent no addressed arguments in spite of according opportunities and as such, arguments of respondent on main

petition is treated nil. Perused the materials placed on record.

The petitioner stated that the suit instituted by him in O S No 32 / 2012 is decreed vide judgment and decree dated 12.06.2018 and preliminary decree is also passed. The petitioner furnished the preliminary decree passed in O S No 32/2012 wherein the petitioner is held entitled to ½ share in the schedule properties. Against said judgment and decree, appeal is preferred in R A No 14/2018 which came to be dismissed by upholding the judgment and decree passed in O S No 32/2012. No appeal appears to have been preferred against the decree passed in R A No 14/2018 and respondent not averred about preferring of appeal against the judgment passed in R A No 14/2018. The main contention raised by respondent is that the petitioner is having no right over the schedule properties. The right of parties is adjudicated completely in O S No 32/2012 and after adjudication of the right, the petitioner is held entitled to ½ share in the schedule properties which aspect is affirmed in appeal by Hon'ble

Appellate court in R A No 14/2018. The contention of respondent that petitioner is having no right over schedule properties, does not sustain for consideration since the right over the properties is already adjudicated and this court cannot go behind the decree. The right of the petitioner is also affirmed by Hon'ble First Appellate Court wherein the judgment and decree passed in O S No 32/2012 is upheld and affirmed. As the right of the parties is already adjudicated, once again adjudicating the right of the parties does not sustain for consideration.

The other grounds urged in the objection by respondent does not sustain for consideration since the right of the petitioner is already adjudicated. The parties do not appear to have challenged the decree passed in R A No 14/2018. No materials are placed for having preferred any appeal against the judgment and decree passed by Hon'ble Appellate court in R A No 14/2018. The respondent neither averred nor placed any materials to show that the decree passed in R A No 14/2018 is challenged. Under such circumstances, the

properties allocated through the preliminary decree needs to be demarcated and divided for which appointment of commissioner appears just and necessary. The properties involve both landed and house properties and as such, there appears necessity of appointing the Thahsildar, Kumta and AEE, PWD, Kumta, for the purpose of suggesting the scheme of partition in order to demarcate and divide the properties in accordance with the terms of the preliminary decree. Hence, on consideration of the said aspects, this court deems it appropriate to pass the following

O R D E R

The objection raised by respondent is hereby rejected.

In the event, the Thahsildar, Kumta is hereby appointed as commissioner to suggest scheme of partition for division of the properties mentioned in 'A' schedule of the petition, in accordance with the terms of the preliminary decree.

AEE, PWD, Kumta is hereby appointed as commissioner to suggest scheme of partition for division of the properties mentioned in 'B' schedule of the petition, in

accordance with the terms of the preliminary decree.

The commissioners shall follow due procedure while demarcating the schedule properties and submit report to the court along with duly prepared sketch providing scheme of partition which will enable to identify the shares of the parties in the properties.

Further, if property mentioned in 'B' schedule of the petition is not amenable for division and demarcation as per preliminary decree then AEE, Kumta, is directed to submit detailed report in that regard with duly prepared sketch and also submit detailed valuation of the properties.

Office is directed to send the copy of the petition, preliminary decree and relevant records to the court commissioner.

Issue commissioner warrant if petitioner complies with the requirements.

Call on ...

Sd/-

Prl Civil Judge, Kumta