

**25.1.2022**

The petitioner filed the present petition for effecting division of the properties in accordance with the terms of the decree passed by this court and modified by Hon'ble Appellate court, by appointment of court commissioner.

The respondents appeared through the counsel and in spite of according opportunity, respondents not filed objections to the petition. Hence, objection of respondents to the petition is taken nil.

Heard the counsel for the petitioner and respondents. Perused the materials placed on record.

The petitioner contended that the suit instituted by him in O S No 54 / 2013 has been decreed by virtue of judgment and decree dated 12.02.2019 and preliminary decree also passed. Appeal is preferred against the decree before the Hon'ble Senior Civil Judge, Kumta in R A No 13/2019 wherein the Hon'ble

Appellate court modified the decree passed in O S 54/2013. The parties do not appear to have challenged the decree. No materials have been placed for having preferred any appeal against the judgment and decree. The properties allotted to the respective parties through the decree needs to be demarcated and divided for which appointment of commissioner appears just and necessary. There appears necessity of appointing the Tahsildar, 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 modified decree passed in R A No 13/2019 as the properties involve both landed and house properties. Hence, on consideration of the said aspects, this court deems it appropriate to pass the following

### **ORDER**

In the event, the Tahsildar, Kumta is hereby appointed as commissioner to suggest scheme of partition for division of properties mentioned in 'A' schedule

of the petition, in accordance with the terms of the preliminary decree as well as modified decree passed in R A No 13/2019. The commissioner shall demarcate item no 1 property by excluding 0-3-0 guntas as per modified 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 commissioner 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.

Office is directed to send the copy of the petition, modified preliminary decree passed in R A No 13/2019 and relevant records to the court commissioner.

The court commissioners are hereby directed to demarcate the shares of respondents also in the schedule

properties as per the terms of modified preliminary decree and office is directed to intimate the said aspect to the commissioners while issuing the warrant.

The parties are at liberty to file memo of instructions within seven days at the office.

sd/-

**Pri Civil Judge, Kumta**