

ORDER

This is a final decree proceeding arising out of O.S.No.57/2000 wherein the petitioners and respondents no.10 to 15 were allotted 1/6th share in the suit schedule properties. Perhaps the defendant no.7 Fredric Pinto who was allotted 1/6th share during preliminary decree proceedings has died issue-less. Therefore, his share is required to be allotted in favour of petitioners and the remaining surviving respondents. Therefore, there will be change in the allotment of shares. Due to the subsequent event, the parties would be entitled for shares as follows:

Parties	Share entitled
Petitioners and respondents no.10 to 15	1/5th share
Respondents no.1 to 4	1/5th share
Respondents no.5 and 6	1/5th share
Respondents no.7(a) to 7(e)	1/5th share
Respondents no.8 and 9	1/5th share

2. Upon perusal of the commissioner's report, he has not suggested the scheme of partition. In fact, a surveyor from the office to ADLR, Udupi was appointed as a Court-Commissioner. Perhaps, due to lack of understanding of law and Court procedures he has only prepared survey sketches as per the enjoyment by the parties. In fact the surveyor who was appointed as a Court-Commissioner has not provided sketch of Sy.No.119/1 measuring 18 cents. He was summoned by this Court and examined as CW1. The survey sketches

do not specify as to the existence of house and other permanent structures. The survey sketches submitted by the Court Commissioner/surveyor is not sufficient to enable this Court to divide the properties by metes and bounds. It is necessary to obtain additional report by appointing a competent person as a Court Commissioner no.2 preferably an advocate from the Bar, so that he will suggest proper scheme of partition. The learned counsel for plaintiff has filed a memo suggesting proposal for scheme of partition. However, the said memo also needs to be considered by the said Court Commissioner no.2. Already the Commissioner's fee is deposited on 07.10.2021 and it is not paid in favour of earlier Court Commissioner as he is entitled for statutory fee as per the Karnataka Land Revenue Act and Rules. Hence, it is not required to again deposit Commissioner's fee. With these observation, this Court deems fit to pass the following:

ORDER

Sri.Karthik S. Rao advocate from Udupi Bar Association is appointed as Court Commissioner no.2. He shall take note of the survey sketches prepared by earlier Court Commissioner and after visiting the suit properties shall submit proposal suggesting scheme of partition.

The Court-Commissioner no.2 is entitled for fee of Rs.5,000/- which is already deposited.

Further, Court-Commissioner no.2 shall be assisted by surveyor, ADLR office Udupi if need be.

Call on for payment of P.F by : 20.12.2023

(Vignesh Kumar)
Prl. Sr. Civil Judge and CJM.,
Udupi.

