

FDP 8-2024

06-01-2025

**ORDER**

Counsel for the respondent filed objection to the petition regarding maintainability of the petition. Thus the present order came to be passed. However, on going through the objections it could be

noted that the respondent was the plaintiff in the case and the petitioners were the defendants in the original suit. After overruling all the other objections, the issue which has to be still decided is the question of improvements.

Though the plaintiff has alleged that she has effected several improvements in the suit properties, the issue has not been framed and thus the plaintiff was not provided the opportunity to prove regarding the improvements effected in the suit property. When the said issue can even be framed and opportunity can be provided to the petitioner. Unless and until the petitioner is provided opportunity to show the improvements effected in the suit property, she would not be entitled to the said share under equity, in which she is entitled to 1/5th share. Therefore, the commissioner cannot be appointed and

the properties cannot be divided till the fact of improvements are proved before this court.

Accordingly the following issues are framed

1) Whether the respondent proves that she has effected improvements in the suit property?

2) What Order or Decree?

For respondent's evidence:-

**(SHARMILA C.S.)**  
Senior Civil Judge & ACJM Karkala.

