

**IN THE COURT OF SENIOR CIVIL JUDGE AND A.C.J.M.,**  
**KARKALA.**

Present : Smt. Roopashri, B.Com., LL.B.,  
Senior Civil Judge & ACJM Karkala.

Dated : This the 21<sup>st</sup> day of January, 2023.

**F.D.P NO.13 OF 2020**

1. Smt. Sujatha,  
Aged about 56 years,  
D/o. Smt. Chindu Bai,

2. Sri. Shreepathi,  
Aged about 30 years,  
S/o. Smt . Sujatha,

3. Suprabha,  
Aged 26 years,  
D/o. Smt. Sujatha,

“Srinivas”, Kanangi, Hirgana Village,  
Karkala Taluk, Udupi District.  
2 and 3 are represented by their  
Mother and G.P.A. Holder, Smt. Sujatha,

Smt. Chindu (deceased - 1<sup>st</sup> defendant)

4. Sri. Shivaramachandra K.,  
Aged about 66 years,  
S/o. Late Smt. Chindu Baik,  
Sourabha, D.No.4-209/7,  
Vishwasnagar, Next to Shakthi Nagar,  
Hebri Road, Jodurasthe,  
Hirgana-576 117.

5. Smt. Shakunthala,  
Aged about 63 years,  
D/o. Smt. Chindu Bai,  
Basrikatte, Honnagudi, Koppa,  
Chickmagalore-577 114.

6. Sri. Lakshmikanth,

Aged about 35 years,  
S/o. Smt. Shakunthala,  
Represented by mother and G.P.A.  
Holder Smt. Shakunthala,

7. Sri. Sureshchandra K.,  
Aged about 61 years,  
S/o. Late Smt. Chindu Bai,  
Sapthagiri Srinivasa Krupa Kanangi,  
Hirgana Village and Post,  
Karkala taluk.  
Represented by his brother and  
G.P.A. holder Sri. K. Shivaramachandra.
8. Sri. Sathischandra K,  
aged about 58 years,  
S/o. Late Smt. Chindu Bai.  
Sapthagiri Srinivasa Krupa Kanangi,  
Hirgana village and post, Karkala taluk,  
Represented by his brother  
and G.P.A. holder Sri. K. Shivaramachandra.
9. Sri. Dineshchandra K,  
aged about 57 years,  
S/o. Late Smt. Chindu Bai,  
Sapthagiri Srinivasa Krupa Kanagi,  
Hirgana village and post, Karkala taluk.  
Represented by his brother and G.P.A.  
Holder Sri. K. Shivaramachandra.
10. Smt. Sarvani,  
aged about 55 years,  
D/o. Late Smt. Chindu Bai.  
"Srinivas Kripa", Kanangi, Hirgana  
Village, Karkala taluk, Udupi district.

11. Anusha, aged 24 years,

12. Gururaj, aged about 18 years.

**11 & 12 are the children of Smt. Sarvani.**

11 & 12 are represented by their  
G.P.A. holder, mother Smt. Sarvani.  
And are residing at Flat No. 7732,

197/A Vainatey CHS Ltd., Kannamwar  
Nagar 2, Opp: Vikhroli Court.  
Vikhroli East: Mumbai – 400 083

13. Smt. Rathi,  
W/o. Late Krishna K.  
aged about 76 years,  
Srinivas Kripa, Kanangi,  
Hirgana, Karkala taluk – 576 117.
14. Smt. Shailaja  
aged about 52 years,  
W/o. Ananda N.  
Antara House”, Chibidre, Kakkinje,  
Belthangady taluk.
15. Smt. Bhanumathi K,  
aged about 47 years,  
349, Bannadka, Moorur,  
Hirgana, Karkala taluk – 576 117.
16. Sri. Prakash,  
aged about 46 years,  
Anupritha CHS, RM 105, B-Wing,  
Room No. 16, Near Mamtha Hospital  
MIDC, Dombivili East, Thane-421 201,  
Maharashtra.
17. Sri. Pradeep K,  
aged about 45 years.  
S/o. Krishna K.  
Srinivas Kripa, Kanangi,  
Hirgana, Karkala taluk-576 117.
18. Sri. Prasanna k  
aged about 43 years.  
S/o. Krishna K.,  
3-57, Srinivasa Kripa Kanangi,  
Hirgana, Karkala – 576 117.
19. Smt. Manjula,  
aged about 40 years,  
W/o Bhaskar Poojari,  
Near Shiv Temple, Amamagar, Chanod, Vapi,  
Ardi, Valsad, Gujrath-396195.

14 to 19 are the children of Late Sri. Krishna K.  
No. 13, 14, 15 and 17, 18 and 19 are  
represented by their G.P.A. holder  
Mr. Prakash, 16<sup>th</sup> petitioner.

**Sri. H. Shivanna(deceased-18th defendant)**

20. Smt. Sunanda,  
Aged about 76 years,  
W/o. Late H. Shivanna  
Srinivasa Krupa Kanangi,  
Hirgana village and post, Karkala taluk.  
Represented by her brother and G.P.A.  
Holder Smt. Shashikanth
21. Smt. Snehalatha,  
Aged about 60 years.  
Sourabha, D.No. 4-209/7  
Vishwasnagar, Next to Shakthi Nagar,  
Hebri road, Joduraste, Hirgana-576 117.
22. Sri. Shashikanth,  
Aged about 57 years.  
Sri Nivasa, Angadibettu,  
Near Adhishakthi Rice Mill, Hirgana post,  
Karkala taluk- 576 117.
23. Smt. Sumalatha,  
Aged about 51 years.  
W/o. Krishna,  
Sapthagiri Srinivasa Krupa Kanangi,  
Hirgana village and post, Karkala taluk.  
Represented by her brother and G.P.A.  
Holder Smt. Shashikanth
24. Sri. Sharath,  
Aged about 48 years.  
Residing at 3-335, Kukkundoor village,  
Karkala taluk, Udupi district.  
Represented by her brother and G.P.A.  
Holder Smt. Shashikanth.

**21 to 24 are the children of Late H. Shivanna.**

25. Sri. K. Sheena (since deceased),

Aged about 83 years,  
S/o. Late Koosu Poojarthi.  
2-188, Hekyarottu House,  
Valpady Village and post,  
Moodabidri taluk, D.K.

- (a) Mrs. Sunanda,  
Aged about 76 years,  
W/o. Late K. Sheena Poojary.
- (b) Mrs. K. Malini,  
Aged about 53 years.
- (c) Mrs. Suvasini,  
Aged about 51 years.
- (d) Mr. Praveen Bhat,  
Aged about 49 years.
- (e) Mr. Prashanth Kumar,  
Aged about 47 years.

Petitioners 25(b) to 25(c) are the children of  
Late K. Sheena Poojary  
25(a) to 25(e) are residing at  
“Hekyarottu House”,  
Valpady village and post,  
Moodabidri taluk, D.K. district.

Sri.K.Mahabala (deceased-20th defendant)

26. Sri. K Vittala,  
aged about 76 years,  
S/o. Late Smt. Koosu Poojarthi.  
Mathru Kripa House,  
Durga, Tellar, Karkala taluk,  
Udupi district-576 117.

...Petitioners

(Petitioners No.1 to 24, 25(a) to (e), 26 -  
By Sri. M.K.Vijaya Kumar, advocate

Petitioner No.25 - Dead)

**V/s**

Sri. Shrikanth,

Aged about 54 years,  
S/o.late H. Shivanna  
Sri Nivasa, Angadibettu,  
Near Adhishakthi Rice Mill,  
Hirgana post, Karkala taluk-576 117. ...Respondent

(By Sri.P. Sugandh Kumar, Advocate)

**PARTIES TO I.A.NO.III**

Shrikanth ..Applicant/Respondent

- Vs. -

Sujatha and Others ..Opponents/Petitioners

**O R D E R O N I. A. N O. I I I A N D O R D E R S O N C O M M I S S I O N  
R E P O R T**

Learned counsel for the respondent has filed objection to the commission report and also filed application under Order XXVI Rule 10 and Section 151 of CPC to set aside the division report dated 16-03-2022 submitted by the commissioner and to issue fresh commission to a new commissioner.

2. Learned counsel for the petitioners submitted no objection to the commission report and filed objection to the IA No III.

3. Heard the learned respective counsels and perused the materials on record. The point that would arise for the consideration is

1. Whether the report of the commissioner is illegal, arbitrary, unfair, unreasonable, improper, biased, prejudicial and unsustainable so as to set aside the report?

2. What order?

4. My answer to the above points is

Point no1 : In the Negative

Point No 2 : As per final order for the following

**REASONS**

5. **Point No 1** : It is stated by the respondent that he has filed objection to the division report of the commissioner, filed objections on 2-3-2022 to the main petition, besides he has filed a memo date 12-1-2022 and 2-3-2022 challenging the appointment of present commissioner, that the proceedings of the commissioner and the report submitted by him are illegal, arbitrary, unfair, unreasonable, improper, biased, prejudicial and unsustainable and in the objections filed by the respondent to the commission report it is submitted that the court commissioner who has drafted the trust deed in respect of the subject matter of the suit property has submitted the division report earlier to the date fixed by the court that too when the application filed by the respondent to receive objection to the main petition and the memo filed by the respondent was pending for consideration . It is further submitted that the division report made by the commissioner and the sketch prepared is wrong , erroneous baseless and illegal , it is against the decree of the court , that suit is for division of the suit properties in to 18 equal shares and for delivery of 3 shares to the plaintiffs but the court commissioner has divided the properties in to 108 shares , the quantum of shares in the report is wrong , the commissioner has not taken in to consideration the actual state of things, possession, enjoyment and existence of buildings and improvements. It is further submitted that respondent has been in possession and management of

temple premises and annex building and surrounding land , he has been performing pooja and religious rituals of the temple as its priest and also managing the temple , he is known as Shrikath Bhat or priest of the temple , he has been residing in the temple annex premises with his family and performing poojas of the deity and temple management , he has no avocation , he is entitled to perform poojas , to reside in the temple premises and manage the temple , hence he is entitled to equity and Shri Shrinivasa temple premises Kangangi existing in the suit property along with the surrounding land with all structures , buildings , amenities and improvements are to be allotted to his share . It is further submitted that decree does not provide for a separate share containing Shrinivas temple, the temple and its annex buildings and appearances cannot be isolated. In case the suit property could not be divided as per the decree in view of existence of Shrinivas temple , then commissioner as a matter of procedure ought to have reported the same to the court and obtained suitable directions but instead of following the procedure an illegal report against the mandate of the decree has been filed hastily apparently at the instance of the petitioners , hence submitted to refer the objections back to the commissioner by appointing new commissioner and call for fresh report in view of the above objection .

6. Per contra in the objection to IA No III it is stated by the petitioners that the respondent holds only fractional share in the property. he holds  $1/5^{\text{th}}$  share of the  $1/18^{\text{th}}$  share held by late K . Shivanna the 18<sup>th</sup> defendant in the suit , all the petitioners are agreeable for reasonable partition and all the petitioners have no dispute between them with regard to partition and allotment of separate share and division by metes and bounds . It is not feasible or practical to divide the temple premises situated in the suit property , only the

remaining property could be divided and the proposal for division made by the petitioners is reasonable and fair, the land allotted to the respondent is more than the share to which he is entitled to, hence submitted to reject the application and accept the division report.

7. So far as the first and foremost objection raised by the respondent regarding filing of division report well in advance than the date fixed by the court that too when IA No II and memo filed by the respondent was pending for consideration is concerned, if the materials placed on record is perused, the respondent in spite of giving sufficient opportunity has failed to file his objection to the main petition, but has filed memo dated 12-01-2022 informing the court that the petitioners created an alleged trust deed involving suit properties and same is drafted by the commissioner appointed in the above case and urged for replacement of the court commissioner. If the proceedings borne out in the order sheet are perused, after appointment of court commissioner, the case was posted to 21-04-2022 for filing commission report. Meanwhile on 02-03-2022 the respondent advanced the case and filed his objections to the main petition with a delay condonation application IA No.II and memo dated 02-03-2022 with a copy of the alleged trust deed and reported conflict of interest and also prayed for replacement of the commissioner. For the memo dated 02/03/2022 the petitioners filed their objection. The petitioners took time to file objections to IA No. II and case was posted to 10.03.2022, on 10.03.2022 again time was taken by the petitioners and case was posted to 16.03.2022 for objections, on 16.03. 2022 petitioners filed objections to I.A.No.II and even though the date fixed for filing the commissioner report was on 24/4/2022 but the court commissioner submitted the division report on 16/3/2022 by that time IA No II

filed by the respondent to receive the objection to main petition and the memo filed by him was pending for consideration .

8. Though the court commissioner in his cross examination has deposed that 16/03/2022 is the date fixed for filing the commissioner report but as evident from the order sheet , on 16/03/2022 the case was posted only for filing objection to I.A. No. II but not for division report . It is true that when the application filed by the respondent and the memo filed by the respondent asking for replacement of court commissioner was pending for consideration , without deciding the said application and memo the court commissioner ought not to have submitted the commissioner report earlier to the date fixed by the court . It is deposed by the court commissioner that he was not given with the notice of advancement application filed by the respondent so also not furnished with the copy of the I.A. No. II filed by respondent and that in the CIS it showed 16/03/2022 as the next hearing date , and since division report was ready with him , he thought it right to submit the division report before the court on the said date itself and accordingly filed the division report on 16/03/2022 .

9. From the materials placed on record it can be gathered that the court commissioner has filed the division report well in advance when IA No II and memo filed by the respondent was pending for consideration. Hence there was no occasion for the court to refer back the objection of the respondent to the commissioner for its consideration while division of the suit properties and there was no occasion for the court to consider whether to replace the court commissioner because of the trust deed drafted by the court commissioner and to consider whether there is conflict of interest .

It is subsequent to the division report filed by the court commissioner this court has decided the IA NO II and permitted the respondent to file the objection to main petition.

10. In the light of the allegation made by the respondent against the court commissioner, now the prime question to be decided is whether the division report prepared by the court commissioner who himself has drafted the trust deed in respect of the suit temple in any way affected the interest of the respondent and whether the division report is against to the terms of the decree passed in O.S. No. 18/2009 and whether the division report suffers from illegality and whether respondent has taken any justifiable contention in his objection to the main petition so as to refer back the objection to the commissioner to prepare fresh division report in consideration of the objection of the respondent . If the answer is yes then alone court can refer the objection to the commissioner by replacing the present commissioner, otherwise for formality sake on technical grounds court cannot set aside the division report .

11. As observed supra, the court commissioner who got examined as Cw1 in his evidence has feigned ignorance of the pendency of IA No II filed by the respondent while his filing the division report . It is admitted by Cw1 that when court commissioner is appointed , he should act impartial , he should be neutral without siding towards any of the parties and court commissioner should not in any way related to the parties to the suit and to the suit properties .

12. So far as the contention taken by the respondent in his objection to the main petition and division report regarding his having possession of the temple premises and his offering pooja in the temple and managing the affairs of the temple and submission made by him to allot the temple premises and annex building and surrounding land to his share is concerned, if decree passed in O.S. No.18/2009 is perused, where in K. Shivanna who is the father of respondent was the 18<sup>th</sup> defendant. The 18<sup>th</sup> defendant by filing written statement has supported the case of the plaintiffs and thereby he had claimed his 1/18<sup>th</sup> share in the suit properties. The said suit was decreed vide judgment and decree dated 02/08/2010 by declaring the 1/18<sup>th</sup> share each of the plaintiffs no 1 to 3, defendants no 1 to 10 and 18 to 21 and declared the 1/18<sup>th</sup> share of defendants no 11 to 17. Further the Will allegedly executed by Koosu Poojarthi in favour of 20<sup>th</sup> defendant Mahabala who is the founder of the temple and the gift deed allegedly executed by 20<sup>th</sup> defendant in favour of trust are declared as null and void and not binding on the members of the family.

13. From the recitals of Ex.R11 it can be gathered that 20<sup>th</sup> defendant Sri Mahabala who was called by name Guruji was the founder of Sri Kshethra Kanangi Sri Srinivas Devasthanam and said temple was built in the year 1979. In the year 2004 trust deed was executed for the administration of the temple. As some of the trustees left the trust, reconstitution deed of trust as per Ex.R11 was executed and the said trust deed was executed prior to the final decree petition filed by the petitioners and subsequent to the preliminary decree passed on O.S. No. 18/2009.

14. If the judgment and decree passed in O.S. No. 18/2009 is read where in it is pleaded by the plaintiffs and said fact has been admitted by the defendants that the said temple was built with the concurrence of the members of the family, the members of the family and their children have been participating and contributing to the maintenance of the temple. When temple forms part of the suit property and said temple is situated in the suit property and when it is declared by the court that the alleged Will executed in favour of 20<sup>th</sup> defendant and alleged gift deed executed by 20<sup>th</sup> defendant in favour of trust is null and void and not binding on the members of the family, and when court has declared the share of the parties to the suit in the suit properties, under such circumstances all the members of the family have equal right even in the suit temple, annex building and appurtenances there to the extent of their share determined by the court. So far as the genuineness of trust deed and the competency of some of the petitioners who are parties to the trust deed to form trust and to execute trust deed is concerned, the said question cannot be determined by this court but it can be said without any hesitation that the respondent being the sharer in the suit properties he has right even in the suit temple and annex building i.e. in the schedule A of the division report only to the extent of 1/6<sup>th</sup> in 1/18<sup>th</sup> share of his father and not more than that. The 18<sup>th</sup> defendant nowhere in O.S. No.18/2009 has taken the contention that his son i.e respondent here in is in possession of the suit temple, annex building and appurtenances there to and that his son is managing the temple and offering pooja in the temple and that he is residing with his family in the temple premises etc. When defendant no 18 has not taken any such defense in O.S. No. 18/2009, the respondent in the present petition cannot be permitted to take such defense.

Even though in the objection to the main petition the respondent has taken some contention and submitted to allot the temple premises, annex building etc to his share, but such submission of the respondent is not permitted to be considered by the court commissioner while division of the properties and it is beyond the scope of the commissioner to consider the said objection of the respondent unless there is specific order from the court regarding allotment of temple premises and annex building to the share of the respondent. Hence even if objection of the respondent is referred back to the court commissioner, it would serve no purpose. When 18<sup>th</sup> defendant is allotted with 1/18<sup>th</sup> share in the suit properties, after his death, the legal heir of 18<sup>th</sup> defendant i.e petitioners no 20 to 24 and respondent will get 1/18<sup>th</sup> share of 18<sup>th</sup> defendant in the suit properties and accordingly respondent being one of the legal heir of 18<sup>th</sup> defendant will get 1/6<sup>th</sup> right in the 1/18<sup>th</sup> share of 18<sup>th</sup> defendant in the suit properties and not exceeding to that. Hence the contention taken by the respondent that under equity he is entitled to be allotted with suit temple along with the surrounding land with all structures, buildings, amenities and improvements to his share etc has no legs to stand.

15. Admittedly the temple and buildings relating to the temple exists in an extent of 2.27 ½ acres of land in which respondent holds 1/6<sup>th</sup> of 1/18<sup>th</sup> share held by his father. Hence he cannot expect for allotment of entire 2.27 ½ acres of land which consist of temple and annex building and appurtenances to his share so also he cannot expect in this final decree proceedings to pass order permitting him to offer pooja in the temple and to manage the temple affairs when all the family members have equal right in the said property.

16. So far as the submission made by the respondent to the effect that "in case the suit property could not be divided as per the decree in view of existence of Shrinivas temple, then the commissioner as a matter of procedure ought to have reported the same to the court and obtained suitable directions" is concerned, if division report at Ex. C1 and the evidence of C.W.1 is perused, since, 2.27 ½ acres of land in suit property consist of temple and annex building, the commissioner has kept the said property separately under Schedule A of the division report without dividing the said property among the sharers because it is not feasible to divide the temple, annex building into 18 equal share and to separate the 1/6<sup>th</sup> share of respondent in his father's 1/18<sup>th</sup> share, for the division of it provision under Partition Act has to be invoked, hence court commissioner without dividing the temple premises and building rightly has reserved the said property in the schedule A of the division report for necessary order of the court and proceeded to divide the rest of the properties as per the terms of the preliminary decree by allotting 1/6<sup>th</sup> in 1/18<sup>th</sup> share to the respondent and remaining extent of property to the joint share of the petitioners.

17. The respondent has made serious accusation against the court commissioner that court commissioner being the draftsman of the trust deed is interested in the subject matter of the petition and that some of the petitioners are parties in the trust deed and hence court commissioner has given favorable division report to the petitioners. The court commissioner during the course of cross examination has deposed if it had come to his knowledge that he himself has drafted the trust deed then he would not have accepted the commission warrant. The learned counsel for the respondent

further brought to the notice of the court that though in the preliminary decree it was held that each sharers are entitled to  $1/18^{\text{th}}$  share in the suit properties but the court commissioner has divided the properties in to 108 shares and there is no proper explanation for the same .

16. If the division report and the final decree petition is looked in to in conjuncture with the preliminary decree passed in O.S. No. 18/2010 , in the preliminary decree , the plaintiffs defendants no 1 to 10 , defendants no 18 to 21 are allotted with  $1/18^{\text{th}}$  share each and defendants no 11 to 17 are collectively allotted with  $1/18^{\text{th}}$  share . In the Final decree petition , the petitioners have sought to demarcate and allot their 760/ 768 shares in the suit properties , whereas court commissioner in his division report has stated that he has divided the properties in to 108 shares and allotted to the share of respondent .

17. The learned counsel for the respondent during the course of hearing on commission report and IA No III has filed memo and submitted that when the total extent of suit properties is 7.29 Acres and in terms of the preliminary decree if 7.29 Acre is divided in to 18 share it would be 0.40.5 Acre , therefore the share of the deceased defendant no 18 is 0.40.5 Acre and if 0.40.5 Acre is divided between the legal heirs of deceased defendant no 18 i.e petitioners no 20 to 24 and respondent six in numbers then it would come to 0.06.75 Acre each hence the correct share of the respondent is 0.06.75 Acre, but the court commissioner has demarcated and allotted 0.05 acre to the share of respondent under B schedule of the commission report which is wrong .

18. For the said memo the learned counsel for the petitioners filed counter memo and submitted that the commissioner has allotted 0.05 acre to the respondent by excluding the area occupied by Shree Shrinivas temple and that petitioners are agreeable for allotment of 0.06.75 acres to the respondent for his share in the entire property and there by admitted that respondent is entitled to 0.06.75 Acre in the entire suit properties including A schedule of the division report and they have no objection to allot the legitimate share of respondent even in the A schedule of the division report .

19. As admitted by the parties to the petition, the respondent being one of the legal heirs of 18<sup>th</sup> defendant is entitled to 0.06.75 Acre in the total extent of 7.29 Acres of land. It is true that in the B schedule of the division report an extent of 0.05 acre of land is allotted to the share of the respondent but excluding 2.27 ½ Acres which is the area occupied by Sri Shrinivasa temple , an extent of 0.05 acre of land is allotted to the share of respondent . As observed earlier the said temple exist in an area of 2.27 ½ acre and same has not been divided as it is not feasible for division hence said 2.27 ½ acre of land is reserved in schedule A of the division report . If 1/6<sup>th</sup> share of respondent in 1/18<sup>th</sup> share of his father in schedule A of the division report is allotted then the total extent of property allotted to the share of respondent would come to 0.06.75 acre . Hence no injustice is caused to the respondent by allotting 0.05 acre of land in B schedule of the division report .

20. Hence even though the court commissioner has submitted the report earlier to the disposal of IA No II and there was no

occasion to refer the objection of the respondent to the court commissioner and though the court commissioner has drafted the trust deed, but the said trust deed is not the subject matter in the present petition. Further the temple which is the subject matter of the trust deed is kept in the Schedule A of the division report without its being divided. In the rest of the suit properties legitimate share of the parties to the proceedings is allotted which is on par with the terms of the preliminary decree. When in the division report no lacuna finds place and division is made in accordance with the preliminary decree, merely because the court commissioner is the person who drafted the trust deed on that count alone court cannot discard the division report unless it is brought to the notice of the court that serious prejudice is caused to the respondent from the said division report. Further when the grounds urged in the objection to the main petition is not sustainable under law, merely because the court commissioner has submitted report before consideration of IA No II filed by the respondent, on that technical ground court can not set aside the division report. Even if objection of the respondent is referred back to the court commissioner by appointing new commissioner, the new commissioner in consideration of the objection of the respondent cannot allot the temple premises and other annex building to the respondent and court cannot pass any order in this petition permitting the respondent to offer pooja in the temple and to manage the temple affairs. When it is categorically stated by the court commissioner that properties reserved in A schedule of the division report is not feasible for division because there exist temple and annex building, under such circumstances even if objection is referred back to the court commissioner by appointing new commissioner they cannot divide the temple premises and

annex building between the shares in to 18 equal share and cannot demarcate the 1/6<sup>th</sup> share in 1/18<sup>th</sup> share of respondent . Under such circumstances even if objection of the court commissioner is referred back and new commissioner is appointed by setting aside the present division report except causing delay no useful purpose would be served . Hence this court is of the opinion that there is no valid ground made out by respondent to set aside the division report and to refer back the objection to the court commissioner. Hence Point no1 is answered in the negative .

21. **Point No 2** : In view of the findings given on Point No.1 this court proceeds to pass the following

**ORDER**

IA No III filed by the respondent under Order XXVI Rule 10 and Section 151 of CPC is rejected .

The division report filed by the court commissioner is accepted.

(Typed by Presiding Officer in Lap Top, corrected and pronounced by me in Open Court on this the 21<sup>st</sup> day of January, 2023.)

**(Roopashri)**  
Senior Civil Judge & ACJM, Karkala.