

MHKO070005592021



**ORDER PASSED BELOW EXH. 8**

1]                      Heard      learned      Advocate      for      applicants.  
Perused      the      application.      Gone      through      record      and  
proceeding respondents/ opponents are absent. The plaintiffs  
in R.C.S. No. 276/12, who are decree holders in view of  
judgment passed by Civil Judge, Jr. Division, Miraj in said  
suit have taken out this final decree application for receiving  
partition and separate possession of their 3/36th share in suit  
house property situated within jurisdiction of this court.

2]                      Needless      to      mention      that,      this      court      has  
received this application as per Section 39 of Code of Civil  
Procedure, filed by applicants before court of Civil Judge,  
Jr.Division, Miraj as per order dtd. 26/02/2021, below Exh.1  
in Civil Misc.Appln.No. 60/2018. All the documents at Exh.3,  
filed by present applicants shows that, judgment and decree  
were passed by said court as per Exh. 3/1 and 3/2  
respectively. The certificate of no satisfaction of decree is at  
Exh. 3/3. Precept in RCS No. 276/12 is at Exh. 3/4. Copy of  
Akhiv Patrika of suit property, which is to be partitioned is at  
Exh. 3/5. The copy of order below Exh.1, by C.J.J.D., Miraj

in Misc.Civil Application No. 60/2018 is at Exh. 3/6.

3]                      Order 26 of Code of Civil Procedure, deals with commissions for local investigations. Order 26 Rule 13 deals with commission to make partition. As per said provision court may, in case not provided by Section 54, issue a commission to such person as it thinks fit to make partition or separation according to the rights declared in such decree. Admittedly, here the suit property, being house property will not come within the bar, provided by Sub-rule. So in order to divide the house property (suit property) into shares between plaintiffs and defendants as per preliminary decree and allot 3/36th share in favour of plaintiffs, an advocate practicing before this court will be the fit person to do such commission, who can do act of commission as per rule 14 of Order 26 of Code of Civil Procedure and submit his report.

4]                      Thus for reasons recorded above, I proceed to pass following order.

**ORDER**

1.      Application Exh. 8 is allowed.
2.      Adv.Shri. G.R. Chadre, is hereby appointed as Court Commissioner for effecting partition of suit property (which is mentioned in detail in present application as well judgment and decree of RCS No. 276/2012) as mentioned in decree.

(Exh.8)                      3                      **Final Decree Application No. 3/2021**  
**CNR NO.: MHKO07-000559-2021**

3. Plaintiffs shall pay the commission fees of Rs. 5,000/- (Rs. Five thousand only) to court commissioner immediately.
4. After receipt of commission fees, commissioner shall do commission work as per Rule 14 by using powers and procedure given under Rule 16 of Order 26, C.P.C. and submit his detail commission report within 15 days from receipt of his fees.
5. Plaintiffs to comply.
6. Issue commission writ accordingly.

Dt.: 26.08.2022.

**( B. A. Gaikwad )**  
Civil Judge Senior Division,  
**Jaysingpur.**