

ORDER BELOW EXH.16
(CNR No.MHWR040002662017)

This is an application for appointment of Court Commissioner by virtue of Order XXVI Rule 13 of Code of Civil Procedure to make partition of house property according to the rights as declared in the decree passed on the judgment dated 26.02.2015 in R.C.S. No.15/2008.

2) The petitioner/decreed holder contended that, their undivided share in the house property needs to be partition and separation as per the decree passed in RCS No.15/2008. They further contended that as per the decree, they have 1/3rd share in the House property as per decree passed by this Court. The decree Holder further contended that, after passing of the judgment and decree the Judgment Debtors are bound to comply the order, but they have not been given their undivided share till today. Hence, they constrained to file this execution petition for the partition and separation of share from the common estate as per Judgment and decree passed by this court. According to petitioner, the appointment of the court commissioner is necessary for the partition of the house property as per decree and order of this court,

3). This court has called the say of the Judgment Debtors for calling objection if any. However, Judgment Debtor did not submit their reply hence, application taken into consideration without reply of J.D. Heard the Ld. Counsel for D.H. He argued that the J.D. has deliberately avoided to appear and co-operate the D.H. Hence, appointment of Commissioner is necessary. On perusal of the application and submission of D.H. and arguments advanced by the Ld. Advocate for him.

4) The following points arises for my determination. I have recorded my findings against each of them for the reasons as follows.

	Points	Finding
1.	Whether appointment of Court Commissioner is essential for the purpose of partition of the house property ?	Yes.
2.	What order?	Application is allowed.

REASONS

5). **As to Point No.1:** Perused the record and proceeding. It revealed that the decree holders have filed present execution petition for the partition and separate possession of the house property in execution of the decree passed in R.C.S. No.15/2008. According to decree holder, their undivided share as per declaration needs to be separated from the common estate. Therefore, in order to actual partition and separation of the shares as per decree, it is needs to be appoint the court commissioner for committing the necessary inquiry and to prepare the report appointing the shares of each party and distinguishing each share as directed in the decree and order by mates and bounds. The commissioner shall Annex the report and transmit to this Court within one month from the receipt of the writ. Therefore, it is taken into consideration that the appointment of Ld. Advocate Shri. K.W.Magare, Seloo and his Assistants Shri. Admane, Civil Engineer are necessary to appoint as a Court Commissioner for partition and separation of the shares of house property mentioned in the decree between parties. The report of the

court commissioner will helpful to the Court to come at conclusion while passing final decree. It also helps the Court come to the conclusion and elucidating the matter in controversy. Hence, I answer the point no.1 in the affirmative.

6). **As to point No.2**: For the reasons recorded above, I come to conclusion that in present execution petition, in order to partition and separation of the shares of the decree holders and Judgment debtors, in respect of the house property situated at Wardha, Tq., & Dist. Wardha, the appointment of Court Commissioner to learned Advocate Shri. K.W.Magare and Shri. Admane, Civil Engineer is necessary. Hence, the following order:-

ORDER

- (1) Application is allowed.
- (2) The Ld. Adv. Shri. K.W.Magare and Shri. Admane, Civil Engineer are appointed as a Court Commissioner.
- (3) Decree Holders are directed to deposit of Rs. 2,000/- each in the Court as remunerations for the Court Commissioner for submitting the commission report in regard to the partition and separation of the House property as per decree passed in RCS No. 15/2008, Dt. 26.02.2015.
- (4) After payment of remuneration of Rs. 2,000/- each, writ be issued to Advocate Shri. K.W.Magare and Shri. Admane, Civil Engineer
- (5) Advocate Shri. Shri. K.W.Magare is directed, after giving the notices to both parties, he shall to commit the necessary inquiry and to prepare the report by appointing the shares of each party

and distinguishing each share as directed in the decree or suggest any other mode in which the parties if agreed with for partition, by mates and bounds. He shall allot such shares to the parties and to submit report within one month.

Date: 25.01.2024

(S. W. Shegokar.)
Jt. Civil Judge Jr. Division,
Seloo.