

15.06.2023

ORDERS ON IAs FILED BY THE
PETITIONERS U/O.XXVI R.10 R/w S.151
OF CPC

These applications are filed by the petitioners to appoint an advocate as Court commissioner to survey the suit schedule 'B' properties and demarcate the share of the parties as per preliminary decree passed in RFA No.100085/2015 and to appoint the Tahasildar, Alnavar taluk as Court commissioner to survey the suit schedule 'A' properties and demarcate the shares of the parties as per preliminary decree passed in RFA No.100085/2015.

2. It is stated in the accompanying affidavits that the petitioners were the plaintiffs in the suit and they filed the suit for partition. Their suit was decreed. Against that the defendants filed an appeal. In that appeal shares were modified and preliminary decree was drawn on 19.04.2016. Hence, as per the said decree it is necessary to survey the suit properties and demarcate the shares of the parties. Thus, the petitioners prays to allow the applications.

3. The advocate for the respondents filed objections to the main petition contending that they filed appeal against the preliminary decree and the same is registered before the Hon'ble Apex Court in Diary No.12706/2022. Thus, he prayed to reject the applications.

4. Heard and perused.

5. On perusal of the entire material placed on record, it is clear that the present petitioners had filed suit for partition in O.S. No.61/2011. The same was decreed. Against that the defendants filed an appeal before the Hon'ble High Court of Karnataka in RFA No.100085/2015. In the said appeal the shares were modified and preliminary decree was drawn. Based on said preliminary decree the petitioners filed the present petition. Thus, as per the said preliminary decree it is necessary to survey the suit properties and demarcate the shares of the parties to draw final decree.

6. The only contention of the respondents is that they filed appeal against the preliminary decree. But there is no any stay to the preliminary decree. Thus, their contention is not acceptable one. Hence, it is

just and proper to appoint an advocate and Tahasildar as Court commissioners to survey the suit properties and demarcate the shares of the parties as prayed for in the present applications. Thus, I proceed to pass the following;

ORDER

The I.As filed by the petitioners under Order XXVI Rule 10 R/w Section 151 of CPC are hereby allowed.

The Tahasildar, Alnavar taluk, is appointed as Court commissioner to measure and demarcate the shares of the parties and submit his proposal for effecting partition with regard to suit schedule 'A' properties as per preliminary decree passed in RFA No.100085/2015.

The advocate Sri. R.A. Patil, is appointed as Court commissioner to measure and demarcate the shares of the parties and submit his proposal for effecting partition with regard to suit schedule 'B' properties as per preliminary decree passed in RFA No.100085/2015.

The petitioners are directed to pay Rs.3,000/- as Court commissioner fee to the Tahasildar, Alnavar taluk and petitioners are directed to pay Rs.8,000/- to the advocate commissioner as commissioner fee.

Petitioners are permitted to pay the commissioners' fee by hand.

Office is directed to issue commission warrants, if petitioner deposits/pays the commissioners' fee and furnish necessary papers.

R/by: 08.08.2023.

III Addl. Senior Civil Judge & CJM.,
Dharwad.