

A.No. 357 of 2020 in C.S No.262 of 1996

N.SATHISH KUMAR, J.

This application has been filed for appointment of an Advocate Commissioner to divide the suit properties into four equal shares and allot 1/4 share to the plaintiffs together and 1/2 share to the defendants 3 to 5 and 1/4 share to the defendants 7 & 8.

2. The suit has been filed for claiming partition of 1/4 share to the plaintiffs. The suit is decreed on the basis of compromise and 1/4 share of the plaintiffs has been declared in the preliminary decree. The plaintiffs have not filed any application for final decree proceedings. Whereas, the defendant No.7 has filed the present application for appointment of an Advocate Commissioner to pass a final decree in terms of the preliminary decree.

3. On a perusal of the preliminary decree, the rights of the defendants have not been determined and also the shares of the defendants have not been determined. But, it is not disputed by both sides, the nature of the shares entitled by the parties. The plaintiffs and the defendants are claiming shares of common ancestor Mr.Govindarajachari and he had four sons which is not in dispute. The plaintiffs are the legal heirs of the first son of the Govindarajachari and the defendants 3 to 5 are the grand children of the original owner. They are also entitled to 1/4 share together and the defendants No.7 and 8 are the children of the fourth son of the original owner. They together entitled to 1/4 share. It is also stated by both sides that the second son and the third son of the original owner have constituted a joint family. Therefore, their legal heirs are entitled to 1/2 share in the entire property. The defendants have not disputed the said facts. The plaintiffs have not come forward before this Court. The plaintiffs

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have restricted their claim to 1/4th share. As there is no determination of rights of the defendants in the preliminary decree, this Court is of the view that the rights of the defendants could be determined in the final decree. In the event of the appointment of Advocate Commissioner, court fee shall be paid by the defendants in terms of the shares as indicated above. Before such exercise, it is also necessary to be divide the suit properties by metes and bounds as there is no serious objection for appointment of Advocate Commissioner by both sides.

4. Accordingly, **Mr. Adarsh Subramanian, (ph: 9754400961) 2133/16, NB 40, Greenways Road, Chennai-600 0028**, is appointed as the Advocate Commissioner to divide the suit properties into four equal shares with the help of the revenue officials. The defendant No.7 and other defendants shall co-operate with the Commissioner in seeking the aid of the Revenue Officers at West Godavari District, Adhra Pradesh District. The defendants 3 to 5 and 7 to 9 have agreed to bear the expenses of the Commissioner's fee and a sum of **Rs.75,000/- (Rupees Seventy Five Thousand only)** is fixed as remuneration of the Advocate Commissioner, besides expenses for survey and transport.

5. For filing the report by the Advocate Commissioner, post on 30.04.2020.

05.03.2020

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