

Executing Court to appoint fresh Court Commissioner particularly when already Court Commissioner's reports are there on record. They are at Exhibits 97 and 149. The grievance of the petitioner/Decree Holder is that when these reports are already there on record, there was no need for the Executing Court to again appoint a Court Commissioner. My attention is invited to an order passed by this Court in Writ Petition No. 7019 of 2010 on 3rd July 2015. The said petition was filed by the present petitioner only. It was filed mainly on the background that the Executing Court directed the present petitioner to file separate application for drawing final decree. While disposing of this petition, this Court has passed the following order :

- (i) It is held that it is not necessary for the plaintiff to file application for passing final decree.
- (ii) The Court shall consider the objections raised by the parties to the reports of the Commissioner at Exhibits 97 and 149 and thereafter proceed to pass a final decree.
- (iii) Rule is partly made absolute in the aforesaid terms with no order as to costs. Certified copy expedited."

3 When the impugned order is perused as specifically paragraph No.2, one can very well understand that the Executing Court has done the exercise of hearing the parties in view of the directions given by this Court. On perusal of the record, we may find that there were two Court Commissioners' reports available on record. One is at Exhibit 97 dated 16th March 2006. As per the said report, Court Commissioner has suggested following

arrangements :

- (a) As suggested half share to the petitioner in the house bearing No. 345, 346, 347(1) and 347(2) and remaining half to the respondents. Report had not suggested any share to petitioner in the open land (whose map is at page 6). Their numbers are 422, 423, 424(1) and 424(2).

4 Whereas if the Commissioner's report at Exhibit 149 is perused, we may find that he has suggested the following arrangement :

- (a) In the house property bearing No. 354 no share is suggested to the petitioner, but entire house is suggested to the share of the present respondent.
- (b) In the property bearing House No. 173 no share is suggested to the petitioner.

5 It seems that both the parties are not agreeable to the arrangements suggested in above two reports by the Court Commissioners. It may happen that the person in possession of the house or land may like to retain those properties with them to the exclusion of other sharers. Even if earlier Court Commissioners' reports are considered, the present respondents does not agree to the arrangements suggested as per the map at page 3 and 6.

So what this Court finds is that there is need to have a comprehensive fresh report by the Court Commissioner. Even if fresh Court Commissioner is appointed, again there will be difficulty in implementing the report given by the Court Commissioner, because it is difficult to arrive at a situation wherein even the fresh report is acceptable to everyone. This can be arrived at only when all the parties on themselves will agree to a particular arrangement. Unfortunately, such contingencies is not there. So, what this Court feels is that even when new arrangement will be suggested by the Court Commissioner, there is need to have valuation of all the suit properties situated at different places on record. So, if the valuation is done, the Executing Court will be in a better position to consider the claim of the parties depending upon the valuation. The reason is that the shares of the parties have already been crystallized by the preliminary decree which has attained finality.

6 So once the valuation would be done, every party is entitled to agitate his claim in support of a particular share and even Court will be in a better position to give its verdict considering the valuation. If there is an occasion that a particular sharer will receive a share more than legitimate share, Court has got powers to direct that party to pay certain sum of money to other sharer. This principle has been recognized in Rule (4) of Order XXVI

of the Code of Civil Procedure. Even the Commissioner is empowered to award sums to be paid for the purpose of equalizing the value of the shares. So, I think, in order to give a finality to the litigation, this method needs to be adopted which has been recognized by the law.

7 So, this Court does not feel it necessary to interfere in the impugned order. But, Court wants to modify the order to a certain extent. Both the parties need to place on record the valuation of the properties. While doing so, they may rely upon the valuation done by the Sub-Registrar while registering the document. They may also rely upon the report of Government approved Valuer or any other material which they feel essential to arrive at correct valuation of the property. Parties may also request the Executing Court to appoint valuer by suggesting names. Once that valuation is done, then the Court Commissioner may suggest distribution of the suit property as per the shares. In view of that, the following order is passed :

ORDER

- 1) The order passed by the Executing Court is modified to the certain extent as follows :
 - (a) Both the parties are directed to place on record the valuation of all the property within a period of two months from today.
 - (b) They are at liberty to request the Executing Court to appoint

Government approved Valuer.

- (c) On the basis of this valuation, the Court Commissioner is directed to suggest the distribution of suit property as per the shares as per the preliminary decree.
- (d) It is made clear that after the report is submitted by the Valuer, the Court Commissioner is directed to give his report within two months thereafter.
- (e) After giving report by the Court Commissioner, the Executing Court is directed to take decision within two months thereafter.

8 The Executing Court is at liberty to regulate the conduct of parties if adjournment is sought unnecessarily by imposing on them a cost of at least 5000/-. It is made clear that rest of the impugned order dated 22nd January 2016 will remain as it is.

9 The Writ Petition is accordingly disposed of.

(S. M. MODAK,J.)

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signed by
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DATTATRAYA
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