

ORDER ON MEMO DATED 03-02-2026

The learned advocate for the petitioners/applicants has filed the present memo stating that the petitioner had filed IA No.4 under Section 151, 152 and 153 of CPC R/w Section 6 of Hindu Succession Act, 1956 (as amended by Act of 2005) on 13-03-2024, seeking modification and amendment of the preliminary decree passed in O.S. No.62/2015 dated 04-07-2016 by re-allotting 1/4th share to

each petitioner i.e., 3/4th share jointly to the petitioners, in view of the amendment to Section 6 of the Hindu Succession Act. It is further stated in the memo that due to certain technical defects and difficulties in the filing and prosecution of the said application, the petitioners intended to withdraw IA No.4 with liberty to file a fresh application under the same provisions of law and for the very same relief. Hence, permission is sought to withdraw said application with liberty to file a fresh application.

Despite sufficient opportunities having been granted, the respondents have not filed any objections to the memo.

Heard the learned counsel for the petitioners and perused the records.

The point that arises for consideration is:

“Whether the petitioners have made out a sufficient grounds to permit withdrawal of IA No.4 with liberty to file a fresh application for the same relief?”

My finding on the above point is in the affirmative, for the following:

REASONS

The records disclose that IA No.4 was filed by the petitioners seeking modification of the preliminary decree in view of the amendment to section 6 of the Hindu Succession Act. The petitioners have now sought withdrawal of the said application on the grounds that there are technical defects and difficulties in the application and that they intended to file a fresh application under the same provisions for the same purpose. The respondents have not chosen to oppose the memo by filing any objections. The request made by petitioners in memo is only for withdrawal of the pending application and not for adjudication of the rights involved therein. Therefore, granting permission to withdrawal application with liberty to file a fresh application would not caused any prejudice to the respondents, as they will have fully opportunity to contest fresh application, if and when it is filed. Further, procedure laws are intended to advance the cause of justice and not to defeat substantive rights on technicality grounds. In order to afford an opportunity to the petitioners to properly present their claim and to avoid multiplicity of proceedings, it is just and proper to permit withdrawal of IA No.4 with liberty to

file a fresh application in accordance with law. Accordingly, the point for consideration is answered in the Affirmative. In view of the above findings and discussion made, I proceed to pass the following:

ORDER

The memo dated 03-02-2026 filed by the advocate for petitioners/applicants is hereby allowed.

Consequently, IA No.4 filed under Section 151, 152 and 153 of CPC R/w Section 6 of the Hindu Succession Act 1956 (Amendment Act, 2005) stands dismissed as withdrawn.

The IA No.5 filed along with above memo is taken on record and call for objection, if any, by the respondents to IA No.5 by 30-06-2026.

No order as to costs.

(Dictated to the stenographer, transcribed by him and corrected, revised then signed by me and pronounced in the open Court on this the 6th Day of June, 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

