

OS No. 6/2015

ORDERS ON IA NO. XXIII

This IA is filed by the defendant No. 2,4 & 6 under Order XIV Rule 5 R/w Section 151 of CPC for framing of additional Issue by allowing this application.

2. In the sworn affidavit the defendant No.6 has stated that the plaintiff has filed this suit for partition and separate possession against the defendants. The court has framed the issues in this case. It is stated that on 01.07.2019, they have filed detailed written statement. In the written statement at para No. 9, it is taken contention that the suit hit by principles of Res-judicata, in para No.18 it is contended that at the time of filing of suit the value of the suit property is more than Rs. 60,00,000/-. Therefore, this court has no pecuniary jurisdiction to try this suit. The Hon'ble Court has not framed the issues in this regard. Therefore, it is necessary to frame the additional issue for proper adjudication of the case. If the application is not allowed the defendant No.2, 4 and 6 will be put to great hardship and injury. On the other hand no hardship would be caused to the other side. On these ground they prayed to allow the application.

3. The plaintiff has filed the objection to the said application and contended that the court has framed the proper and appropriate issues and hence framing of additional issue as prayed by the plaintiff is not sustainable in the eyes of law. Therefore the very application filed by the plaintiff is liable to be dismissed. Further he has contended that the defendant No.2, 4 and 6 have filed this IA for just to fill up the lacuna and

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to drag on the matter have filed this kind of application which is not maintainable at this stage. For the reasons stated above they prayed to dismiss the IA with cost.

4. Heard and perused.

5. The points that would arise for my consideration are as under

1. Whether the defendant No.2, 4 & 6 have made out grounds to frame the additional issues as prayed for?

2. What order?

6. My answers to the above points are as under:

1. In the affirmative

2. As per final order for the below given ..

REASONS

7. **POINT NO. 1** The plaintiffs have filed this suit for partition and separate possession against the defendants. After registration of the suit and in pursuance of suit summons the defendants have appeared and filed his written statement and denied all the allegations made in the plaint. Further on going through the pleadings of the both the parties, the court has framed the issues on 01.07.2016. But now the defendant No.2, 4 & 6 have come up with this application to frame the additional issue stating that, the defendants have contended in their written statement at para No. 9 that, the suit is hit by principles of resjudicata and in para No.18 that about the pecuniary jurisdiction. In this regard the court has not framed the issues. Therefore it is necessary to frame the additional issue for proper adjudication of the case.

8. On going through the pleadings, the defendant No. 2, 4 & 6 have

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specifically taken the contentions at para No. 9 and 18 of written statement. On going through the records, due to over sight, this court has not framed the issues on that point. The issues arises when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, in my considered opinion, it is just and necessary to frame the additional issue for proper and effective adjudication of the matter. Though defendant No. 2, 4 & 6 are not the family members of the plaintiffs and defendant No. 7, but, they have contesting as parties to the suit can be raised probable defense which is permissible. Hence, the IA filed by the defendant No. 2, 4 & 6 is deserves to be allowed. **Hence this Court answer this point in the affirmative.**

9. **POINT NO. 2 :** In view of the answer to the above point, this Court proceed to pass the following :

ORDER

**IA No. XXIII filed by the plaintiff under Order 14 rule 5
R/w Section 151 of CPC is hereby allowed.**

Consequently one Additional issue framed.

Civil Judge & JMFC, Hukkeri

ORDERS ON I.A. No. XXIV & XXV

The counsel for the defendants filed these applications under Order 18 Rule 17 and under Sec. 151 and under Order 8 Rule 1(A) r/w Sec.151 CPC for recall of DW 4 to lead further chief examination and to file additional documents by re-opening the stage by allowing these applications in the interest of justice.

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2. On the other hand, the counsel for plaintiffs filed objection to the said applications by denying the entire contents of the affidavit. Further it is contended that, the documents which produced by the defendants are not relevant for proper adjudication of the case and prayed to dismiss the applications with cost.

3. Heard both side counsel and perused the applications, affidavit and objection filed by the parties.

4. Now the points that would arise for my consideration is as follows:

“Whether applications filed by defendants to recall of DW-4 for marking of document and to file the documents by re-opening the stage, are deserves to be allowed?”

5. My finding to the above point in the Affirmative for the following:

REASONS

6. It could be seen from the record, this suit is filed by the plaintiffs for relief of partition and separate possession as against the defendants. Having gone through available materials on record, the counsel for defendants filed these applications stating that the stage of suit is posted for arguments. Both side evidence has already been closed. At this juncture, defendant No.6 filed sworn affidavits stating that, on 01.07.2019 the defendants have filed written statement, wherein it is contended that her husband and mother have filed suit in OS No.64/2003 before the Hon'ble Senior Civil Judge Hukkeri the same has been disposed off. Further there was

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RA No.20/2012 filed by her husband Ghulappa and her mother. On 14.09.2022, the said appeal was disposed. The parties to the OS No.64/2003 and the parties to this case are one and the same. Further the defendants have made application to the produce document to prove the case. The said documents are material documents for adjudication of the case. Hence, they sought permission of this court, to file the document and it is necessary to mark as exhibits. They also sought for re-call of DW.4 for marking of above said documents. Per contra, the counsel for plaintiffs resisted the applications filed by the defendant by stating that applications are not maintainable. The case is posted for arguments stage now they came up with these applications. On perusal, there is no serious objection regarding production and marking of documents and also for re-call of DW-4 by the plaintiffs side. However, the liberty has to be given to the party, who came with additional document for adjudication of the matter. If the applications are not allowed the defendants will be caused inconvenience and hardship. On the other hand, no hardship and inconvenience caused to plaintiffs, if applications are allowed. They have every right to cross-examine the witness. Therefore, the applications filed by the defendants are deserve to be allowed. Nevertheless, the delay is condoned by imposing cost. In the result, this court proceed to pass the following;

ORDER

I.A.No. XXIV and XXV filed by the defendant No.2, 4
& 6 are hereby allowed with cost of Rs.500/-each.

Hereby directed to lead further chief examination of
DW.4.

Call on 16.01.2024

Civil Judge & J.M.F.C. Hukkeri

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Additional issue

1. Whether the defendants No.2, 4 & 6 prove that, the present suit is hit by principles of res-judicata ?
2. Whether the defendants No.2, 4 & 6 are prove that, this court has no pecuniary jurisdiction to try the suit ?

10.01.2024

Civil Judge & JMFC, Hukkeri