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|------------------------------------------------------|---|-------------------------------------|
| The provision under which application is filed       | : | IA No.V– U/Order. XIV Rule 5 of CPC |
| Relief Sought for                                    | : | To recast of issue No.1             |
| The date on which application is filed               | : | 05.04.2023                          |
| Number of application                                | : | IA No. V                            |
| The date on which objections are filed by opponents  | : | --                                  |
| The date on which Order is passed on the application | : | 19.02.2026                          |

**ORDERS ON IA NO. V FILED UNDER ORDER XIV RULE 9  
R/W SEC. 151 TO RECAST THE ISSUE No.1.**

- 1.** The Advocate for the plaintiff has filed the application under Order 14 Rule 5 r/w Sec. 151 of CPC to recast the issue No.1.
- 2.** In the memo of facts, Shri. N.G.Kulakarni Advocate on behalf of the plaintiff has stated that, the suit is filed by the present plaintiff against the defendant for partition and separate possession in respect of suit land according to their shares. Even though the plaintiffs and defendants are cultivating the land separately, there is no division by metes and bounds. He states that the question of joint family does not arise and there is no pleading with respect to the joint cultivation and that there are actual area allotted to the each party for possession and cultivation. He states that the land is not actually divided and partitioned in terms of the shares mentioned in the RTC. Therefore they have filed the suit for partition and separate

possession by metes and bounds. Therefore he states that the question of joint family does not arise. And prays to recast the issue.

**3.** Perused the said issue and the said issue is framed with respect to the joint family status of the plaintiff and the defendant and that the burden is placed on the plaintiff. The said issue No.1 is reads as here under : *Issue No.1 Whether the plaintiff proves that the suit property is joint family property of the plaintiffs and the defendants and they are in joint possession of the same.*

**4.** The question that arises for the consideration of this court is

***Whether the said issue No. 1 needs to be recasted ?***

**5.** This Court answers the above point in the affirmative for the following :

**REASONS**

**6.** It is the case of the plaintiffs that they and the defendants have divided their properties but the RTC's are coming in the joint names till today. Therefore they states that in order to get loans from the nationalised banks, they are in requirement of separate RTCs and that the lands have to be divided by metes and bounds. Hence, they have filed the suit for actual division of the properties as per the earlier partition. The suit property

is an agricultural land in Sy No. 65/B measuring 08Ac including 04Gs of Kharab, situated at Ingali Village, Tq: Hukkeri. It is stated that the defendants No.1 to 3 are cultivating 14Gs-14Anas and defendant No.4 is cultivating 14Gs-14Anas and defendants No.6 to 8 are cultivating 01Ac-04Gs-10Ana. The plaintiffs are claiming share of 01Ac-04Gs-10Ana in the suit property. The defendants have not denied the said pleading of the plaintiff . Therefore the said issue No. 1 needs to be recasted and I answer the above point in the affirmative and I proceed to pass the following :

**ORDER**

***The IA No. V filed by the plaintiff U/O XIV R 5 R/w Sec 151 of CPC is hereby allowed.***

***The said issue is re-casted.***

***The said re-casted issue is as here under:***

***Whether the plaintiffs prove that, they and the defendants being the members of the joint family, earlier have divided the suit properties as per the description given in the plaint at para No.3 and that they are entitled for partition by metes and bonds as per the earlier partition ?***

**(Shri. Aditya R. Kalal)  
Civil Judge and JMFC, Hukkeri**

**OS No. 30/2020**