

ORDER ON I.A.NO.XXVI

i.	Provision under which the application is filed	:	U/o.XIV Rule 5 R/w Sec. 151 of CPC.
ii.	Relief sought for	:	Seeking additional issue No.2 may be treated as preliminary issue.
iii.	The date on which the application is filed	:	24.07.2025
iv.	Number of the application	:	I.A.No.XXVI
v.	The date on which the objection is filed by different opponents	:	01-08-2025
vi.	The date on which the order was passed on the said application	:	14-08-2025

1. The defendant No.6 has filed I.A.No.XXVI U/o.XIV Rule 5 R/w.Sec.151 of CPC seeking additional issue No.2 may be treated as preliminary issue.

2. In support of above application, the defendant No.6 has sworn in an affidavit stating that, the defendant No.2 has filed the counter claim in this case and she has included some properties. But those properties are exclusively belonging to them and already they have taken the contention regarding paying the court fee, which already paid by the defendant No.2 is deficit. In respect of counter claim, the defendant No.2 has to pay U/Sec.8 of the KCF & SV Act not U/Sec.35(2) of KCF & SV Act. Therefore the defendant No.2 has to pay the court fee on the present market value of the counter claim suit properties i.e., landed properties and open space properties. Hence additional issue No.2 may kindly be treated as a preliminary issue in respect of court fee before defendant's evidence. If the

application allowed no harm will be caused to the other side, otherwise they will be put to heavy and irreparable loss. Hence, prays to treat the additional issue No.2 as preliminary issue for the purpose of court fees paid by the defendant No.2 in the interest of justice.

3. On the contrary, counsel appearing for the defendants No.2 & 3 has filed objection to above application contending that, the application is not tenable either in law or on facts. The defendant No.6 has filed present application for treating additional issue No.2 as preliminary issue for the purpose of determination of court fees paid by the defendants No.2 & 3 is not proper and the defendant No.6 has not considered the nature of the suit and filed frivolous application. It is the defendant No.6 who has to clarify that how much court fees on the counter claim has to be paid by the defendants No.2 & 3. On 12.01.2021 the defendant No.2 has paid Rs.200/- court fees on counter claim claimed in his written statement. The counter claim properties are joint family properties purchased out of the income of joint family which were purchased in the name of brother, wife and father of defendant No.2, but the counter claim properties of defendant No.2 family, hence payment of court fees on counter claim properties does not arise. The defendant No.2 has paid court fees as per Sec.8 of the Karnataka Court Fees & Suit Valuation Act. The counter claim properties are joint family properties and all the class-I heirs are entitled to get equal share. Hence, prays to reject the application.

4. The defendant No.6 counsel relied upon decision reported in 2000(4) KLJ 364 between A. Madhav Hegde V/s. Rajendra S.

Revankar.

4. Heard both side. Perused application, objection, plaint averments & other materials on record. Having heard the counsels & going by the application, objection & pleadings, the following points arise for consideration :

POINTS

1. Whether the defendant No.6 has made out sufficient grounds to allow the application ?
2. What order ?

5. This court answers to above points as under :

Point No.1 : In the affirmative.

Point No.2 : As per final order for the following :

REASONS

6. Point No.1 : At the outset, the plaintiffs have filed suit against the defendants for the relief of partition & separate possession. The defendant No.6 has filed present application for treating additional issue No.2 as preliminary issue which involves issue of court fees paid by the defendant No.2 on the ground that, the defendant No.2 & 3 have counter claimed their share in counter claim schedule properties but failed to pay court fees properly on the counter claim schedule properties. On the other hand, the defendant No.2 counsel has filed objection denied the application averments and specifically contended that, the defendants No.2 & 3 have paid court fees as per Sec.35(2) of Karnataka Court Fees & Suit Valuation Act and the counter claim schedule properties are the ancestral &

joint family properties of plaintiffs & defendants.

8. After hearing both side and materials available on record, it is pertinent to note that, the plaintiffs have filed suit against the defendants for the relief of partition & separate possession. The defendants No.2 & 3 in their written statement have claimed their legitimate share of 1/5th each in counter claim schedule properties and paid Rs.200/- court fees as per Sec.35(2) of Karnataka Court Fees & Suit Valuation Act. On careful perusal of the written statement of defendant No.2, it clearly discloses that, the defendant No.2 claimed legitimate share in counter claim A to F immovable properties and A to F movable properties. The defendant No.2 & 3 claims their legitimate share in Rs.2,89,94,951/- and in 65 tola gold and 35 KG silver.

9. The counter claim schedule properties of defendants No.2 & 3 having movable & immovable properties, wherein he has paid court fees as per Sec.35(2) of Karnataka Court Fees & Suit Valuation Act. After going through the pleadings, this court has framed additional issue No.2 as :- Whether the plaintiffs prove that, the defendant No.2 & 3 paid insufficient court fees on counter claim relief claimed by them ? It is the question of law pertaining to court fees paid by the defendant No.2 & 3 on counter claim schedule properties and the plaintiffs in their rejoinder have specifically contended that, the defendants No.2 & 3 have not properly paid the court fees on counter claim schedule properties.

10. The defendant No.6 counsel relied upon decision reported in 2000(4) KLJ 364 between A. Madhav Hegde V/s. Rajendra

Revankar, the Hon'ble High Court of Karnataka clearly held that, Order 14 Rule 2 (2) of CPC and Sec.11(2) of CPC speaks about the preliminary issue on payment of court fees. It further observe that, when plea raised in the written statement as to insufficiency of court fees, it is mandatory for trial court to try and decide issue as preliminary issue before recording evidence. In view of the ratio laid down in the supra decision, it is crystal clear that, when the plea of insufficiency of court fees paid is raised on the other side, then the trial court has to try the issue as preliminary issue and proceed in accordance with law. As per Sec.11(2) of Karnataka Court Fees & Suit Valuation Act mandates that, the issue regarding court fee should be tried as a preliminary issue.

11. The objection raised by the defendant No.6 with regard to the payment of court fees which is purely question of law and the same shall be decided at the behest stage of the suit, since the plaintiffs have also raised the plea of court fees paid by the defendants No.2 & 3 in their rejoinder. Therefore, the additional issue No.2 framed with regard to the payment of court fees paid by the defendants No.2 & 3 on the counter claim schedule properties has to be decided and considered as a preliminary issue before recording the evidence of defendants. So, the defendant No.6 has made out sufficient grounds to allow the application and treat the additional issue No.2 as a preliminary issue. Accordingly, with these observations, this court answers point No.1 in the affirmative.

12. Point No.2 : In view of above findings, the following order is passed :

ORDER

I.A.No.XXVI filed U/o.XIV Rule 5 R/w
Sec. 151 of CPC by the defendant No.6 is
hereby allowed.

The additional issue No.2 is treated as
preliminary issue.

For inquiry on preliminary issue.

By : 19-08-2025

Sd/-

***Addl. Senior Civil Judge,
Jamkhandi.***