

ORDER ON I.A.NO.XI, XIII AND MEMO DATED:13.02.2025

Plaintiffs have filed I.A.No.11 under Order 23 Rule 1 of CPC., seeking permission to abandon their claim in respect of item No.19 of the suit schedule property or in the alternative dismiss the suit against defendant No.12 & 13 in respect of item No.19 of the suit schedule property in the interest of justice and equity.

Defendant No.1 to 3 has filed I.A.No.13 under Sec.151 of CPC., seeking permission to file objection on memo and compromise petition filed by the plaintiffs in respect of item No.19 in collusion with defendant No.12 & 13.

Plaintiffs have filed memo stating that the matter has been settled between plaintiffs and defendant No.12 & 13 and prays to dismiss the suit against defendant No.12 & 13 in the interest of justice and equity.

2. Plaintiff No.1 has sworn to an affidavit in support of this I.A and contended that he has filed this suit for partition and separate possession in view of the consent deed executed on 07.01.2025 in respect of item No.19 the plaintiffs are intending to abandon their claim in respect of item No.19 and prays to dismiss the suit against defendant No.12 & 13 in the interest of justice and equity.

3. Defendants have filed objection to I.A.No.11 and contended that the land bearing Sy.No.19 measuring 2 acres was granted to defendant No.4 and he had no exclusive right over the said land.

The said property was granted by the Government for the Joint family in the name of defendant No.4. The defendant No.1 to 3 being the children of Erachikkaiah have got equal right and share over to Sy.No.19. Hence, prays to dismiss the I.A.No.11 in the interest of justice and equity.

4. Defendant No.2 has sworn to an affidavit in support of I.A.No.13 and contended that he is aged man and not conversant with the facts of the case. The senior advocate has informed his colleague to make submission to allow the I.A and memo filed by the plaintiffs and owing to the information, she has represented him and made submission in the open court. The submission made by the junior advocate in the absence of senior advocate was by oversight and confusion and hence prays to recall the order passed on compromise petition entered between plaintiffs and defendant No.12 & 13 with respect to item No.19.

5. Plaintiffs and defendant No.12 & 13 have not filed any objection to I.A.No.13.

6. The points that arise for my consideration are as follows;

1. Whether I.A.No.XI filed by the plaintiffs under Order 23 Rule 1 of CPC., is deserves to be allowed?
2. Whether I.A.No.XIII filed by the defendant No.1 to 3 under Sec.151 is deserves to be allowed?

3. Whether plaintiffs have filed memo dated:13.02.2025 deserves to be allowed?
4. What order?
7. Heard affidavit and objection averments and perused the materials placed before me.
8. My findings to the above points are as follows;

POINT No.1 : In the Affirmative

POINT No.2 : In the Affirmative

POINT No.3 : In the Affirmative

**POINT No.4 : As per final order
for the following;**

REASONS

9. Point No.1 to 3: Since these three points are inter-related, they are taken up together for common discussion. Plaintiffs have filed this suit for partition and separate possession against the defendants. Later plaintiffs and defendant No.12 & 13 have compromised the matter in respect of item No.19 and in this regard plaintiffs have filed I.A.No.11 seeking permission to abandon the claim in respect of item No.19 or in the alternative dismiss the suit against defendant No.12 & 13. The concerned defendants have submitted no objection to this I.A and memo. Whereas defendant No.1 to 3, though they have initially stated no objection, later they have filed I.A.No.13 seeking permission to file objection and filed their objection. Since junior advocate had submitted no objection and later senior counsel filed I.A.No.13 stating due to oversight the said admission was made by his

junior counsel and considering the grounds urged in I.A.No.13, I feel it just and proper to permit the defendant No.1 to 3 to file objection.

10. So far as I.A.No.11 is concerned, the said I.A is filed only in respect of I.A.No.19. On perusal of the written statement filed by defendant No.1 to 3, it goes to show that they have totally denied the entire plaint averments as false and further taken contention that plaintiffs are making illegal claim over the properties of Lakkamma and Siddamma, since suit in OS.No.155/2011 is pending the present suit for partition and separate possession is not maintainable and hence prayed for dismissal of the suit. Apart from that they have also pleaded that they do not know that item No.19 was granted in the name of Hanumantaiah for the benefit of Joint family. Hence, the contentions taken in the written statement is contrary to the objection filed to I.A.No.11. They have also not sought any counter-claim in respect of item No.19. In their written statement they have pleaded that in OS.No.155/2011, they have filed counter-claim. If that is the case they are at liberty to agitate their remedy in the said suit. Under such circumstances they have no right to object for compromise entered between plaintiffs and defendant No.12 & 13 in respect of item No.19. When defendant No.1 to 3 have not claimed any right in respect of item No.19 and prayed for dismissal of the suit, there is no impediment in permitting the plaintiffs to abandon their claim in respect of item No.19 as sought for. Hence, I answer **Point No.1 to 3 in the Affirmative.**

11. POINT No.4: For the aforesaid reasons. I proceed to pass the following;

: ORDER :

I.A.No.XI filed by the plaintiffs under 23 Rule 1 of CPC., is hereby allowed.

Plaintiffs are permitted to abandon their claim over item No.19 of the suit schedule property.

I.A.No.XIII filed by the defendant No.1 to 3 under Sec.151 of CPC., is hereby allowed.

Defendant No.1 to 3 are permitted to file objection to IA.No.11 and memo.

The memo filed by the plaintiffs on 13.02.2025 is hereby allowed.

Consequently suit against defendant No.12 & 13 is hereby dismissed.

(SHILPA.H.A)
Senior Civil Judge &

JMFC.,

O.S.No.63/2022

Doddaballapura.