

ORDER

The defendant has filed I.A. U/o 14 Rule 5 of CPC prayed to frame the additional issue in the suit.

2. The defendant sworn to an affidavit filed in support of contended that, the defendant No.2 and the husband of the plaintiff by name Narasimhaiah are brothers and they constituted Hindu undivided joint family, the 2nd defendant in this suit has filed a suit against the husband of the plaintiff in O.S.No.85/2002 for the relief of partition and separate possession in which the suit schedule property i.e., SY.No 77/2A1 measuring 3 acres was included as item No.8. The said suit was decreed and ordered that the 2nd defendant of this case is entitled for $\frac{1}{2}$ share in the suit schedule property by meats and bounds. The plaintiff has suppressed this fact and filed this false case against the defendants. In view of the judgment and decree in O.S.No.85/2002 this suit is not maintainable. Therefore the framing of issue on maintainability is essential for adjudication of the case. If this application is not allowed the defendant will put to great loss and damage to the defendants. Hence prayed to allow the application.

3. The plaintiff has filed objection contending that, the application is not maintainable, there is no

valid and tenable grounds to allow the application this is a frivolous application, the defendant had filed several applications with molofied intention, those applications were rejected by the court. The relief sought to frame preliminary issue is highly illegal and the plaintiff party to previous proceedings, therefore this application is not maintainable. Hence prayed to reject the application.

4. On perusal of the materials on record it is noticed that, this is a suit for declaration and permanent injunction now the case is at the stage of cross of PW1. At this stage the defendant has filed this application for framing of additional issue on maintainability. On perusal of the judgment passed in O.S.No.85/2002 the defendant in the present suit was plaintiff in that suit and the defendant in that suit is husband of plaintiff in this suit, that suit was filed by the defendant No.2 in this suit for partition and separate possession, the suit schedule property in this suit was one of the suit schedule property in that suit. The said suit was decreed that the defendant No.2 in this suit is entitled for $\frac{1}{2}$ share in the suit schedule property of this suit. The plaintiff in the present suit has filed this suit against the defendants for declaration and permanent injunction with regard to suit property. The defendant contending that, in view of the judgment in

O.S.No.85/2002, he is also having half share in the suit schedule property. Therefore in view of the judgment in O.S.No.85/2002 this suit is not maintainable. Perused, item No.8 in O.S.No.85/2002 bearing SY.No.77/2A1 measuring 5 acres 3 guntas bounded by East land of Kamakka and K.L.Ramegowda, West land of Kamakka and Sannakamanna, North land of Lakshamma, South land of Srikantegowda and the suit schedule property bearing SY.No.77/2A measuring 4 acres 34 guntas bounded by East land of Sadashivagowda, West land of Kamakka and Sannakamanna, North land of Lakshamma, South land of Srikantegowda. Though the survey numbers, measurement and boundaries of suit property shown in both the suits are different with each other ,but the plaintiff has not contended this fact in his objection. Therefore framing of additional issue is essential for adjudication of this matter. Hence , I proceed to pass the following;

Order

I.A.filed by the plaintiff U/o 14 Rule
5 of CPC is hereby allowed.

Additional issue framed and
pronounced in the open court.

(Smt.Geeta)
Addl. Civil Judge & JMFC.,
Sira.

ADDITIONAL ISSUE

1. Whether defendants prove that item No.8 in O.S.No.85/2002 and the suit schedule properties are one and the same and in view of the judgment in O.S.No.85/2002 the suit of the plaintiff is not maintainable?