

ORDER ON I.A.9 AND 10 FILED UNDER ORDER XIV
RULE 5 OF CPC

1. The Defendant has filed the present I.A. under Order XIV Rule 5 of CPC seeking to recast Issue No.3 as follows:

“Whether the plaintiff proves that during the life time of K.C. Girish he was always ready and willing to perform his part of the agreement of sale in respect of the suit property?”

2. The learned counsel for the Defendant contends that the suit is filed by the legal representatives of the original agreement holder Sri K.C. Girish, who died prior to the institution of the suit. Therefore, in a suit for specific performance filed by the heirs, the crucial question to be adjudicated is whether the deceased agreement holder himself was ready and willing to perform his part of the contract during his lifetime. It is submitted that the existing issue framed by the Court does not specifically capture this important aspect and hence requires recasting.
3. The learned counsel for the Plaintiffs opposed the application contending that the issues framed already cover the requirement of readiness and willingness. However, it is not denied that the agreement holder died prior to filing the suit.
4. I have carefully considered the rival submissions and perused the pleadings. Admittedly, the plaintiffs claim under the deceased agreement holder. In such cases, the readiness and willingness of the original agreement holder during his lifetime is a material fact, and the burden lies on the plaintiffs to establish the same. The existing issue framed as:

“Whether the plaintiffs prove that they are ready and willing to perform their part of the contract?”

does not specifically address the readiness and willingness of the deceased agreement holder, who was the actual contracting party.

5. Under Order XIV Rule 5 CPC, the Court may amend, strike out or add issues when such amendment is necessary for determining the real controversy between the parties. The proposed issue directly relates to the foundational requirement under Section 16(c) of the Specific Relief Act, i.e., readiness and willingness of the agreement holder.
6. Unless the readiness and willingness of late K.C. Girish during his lifetime is specifically put in issue, the adjudication of the suit may remain incomplete. A specific issue will assist both sides to lead focused evidence and avoid any ambiguity during trial.
7. Therefore, I am of the considered opinion that the proposed recast issue is necessary for effective adjudication of the dispute.
8. Further, the contention of the Defendant is that, the agreement was executed for the security purpose for the loan transaction. But no issues have been framed.

O R D E R

The I.A.No.9 filed by the Plaintiff and I.A No.10 Defendant under Order XIV Rule 5 CPC is **hereby allowed**.

Issue No.3 shall be recast as follows:

“Whether the plaintiffs prove that during the life time of K.C. Girish, he was always ready and willing to perform his part of the agreement of sale in respect of the suit property?”

Further the following additional issue No.1 have been framed.

1. Whether the Defendant proves that the alleged sale agreement dated 11.11.2014 was executed for the purpose of security to the loan transaction borrowed from deceased K.C.Girish and he has repaid the entire loan amount?

For Further plaintiff evidence on Addl
Issues by: 27.11.2025.

Sd/-

(Thahakaleel K.A.)
II Addl. Civil Judge & JMFC.,
Kadur.