

**ORDERS ON IA NO.17 FILED BY THE DEFENDANT NO.1
AND 2 UNDER ORDER 14 RULE 5 R/W SECTION 151 OF
CPC**

This is an application filed by the defendant no.1 and 2 U/O. 14 Rule 5 r/w section 151 of CPC, praying this court to frame following additional issue.

“ Whether the defendant No.1 and 2 prove that the suit is barred by principle of resjudicata?”

2. The said application is opposed by plaintiff.
3. Heard, both the sides.
4. The points that arise for my consideration are as follows:

1. Whether the defendant No.1 and 2 have made out sufficient grounds to frame additional issue?

2. What order?

5. My answer to the above points are as follows:

Point No.1. - In the affirmative

Point No.2 – As per the following.

REASONS

6. The plaintiff has filed this suit against the defendants for the relief of rectification of northern boundary in the registered sale deed 16.10.2015 and possession of B, C and D schedule properties and for perpetual injunction. The case is posted for further plaintiff side evidence. At the juncture the

defendant No.1 and 2 have come up with this application seeking to frame additional issue.

7. It is the contention of the defendant No.1 and 2 that in the written statement filed by defendant No.2 at para No.5, page No.3 he has taken specific contention that one Oliverv Wilfred Cohilo had filed a suit in O.S.No.156/2001 on the file of Senior Civil Judge, Chikkamagaluru against defendant No.1 and 2 in respect of plaint schedule property for the relief of declaration and possession and said suit came to be dismissed. The present suit is for the same relief in respect of same properties and between same parties and same is not maintainable and barred by principle of resjudicata. But, no issue has been framed with regard to the said contention. Hence, prays to frame the additional issue.

8. On the other hand plaintiff contended that the parties and properties involved in both the suits are not one and the same and therefore framing additional issue does not arise. Hence, prays to dismiss the I.A.

9. On the perusal of written statement filed by the defendant No.2 it is noticed that the defendant No.1 has taken contention at page No.3, para No.3 that, already there is a finding on the subject property in O.S.No.156/2001 and as such this suit is not maintainable as per principle of resjudicata. On the perusal of issues it is noticed that the issue with regard to above contention taken by the defendant No.2 in his written statement has not been framed by this court. Therefore, it is necessary to frame the said additional issue. Thus, defendant No.1 and 2 have made out grounds to

frame additional issue. Accordingly, this court answers **point No.1 in the affirmative.**

10. **Point No.2.** - In view of above discussion, I proceed to pass the following;

ORDER

The IA.No.17 filed by the defendant no.1 and 2 U/O. 14 Rule 5 r/w section 151 of CPC is hereby allowed.

Additional issue No.1 **“Whether the defendant No.1 and 2 prove that the suit is barred by principle of resjudicata?”** is framed and read over.

For further plaintiff side evidence by 22.08.2025.

Sd/-
**Senior Civil Judge & JMFC.,
Mudigere.**