

KACM510003952021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 21st day of March 2024

OS No.13/2021

BETWEEN:

M.R.Sreedhara Adiga and others

...Plaintiffs.

V/s.

AND:

Smt.Kamalakshi and others

...Defendants.

IA.No.XX

BETWEEN:

Sri.J.L.Balakrishna

...Applicant/ Defendant No.12

V/s.

AND:

M.R.Sreedhara Adiga and others

...Opponent/ Plaintiffs



ORDERS ON IA NO.XX

The applicant/ defendant No.12 filed IA No.XX under Order 14 Rule 5 R/w Section 151 of CPC to frame additional issue regarding maintainability of the suit as mentioned in the schedule.

SCHEDULE

Whether defendant No.12 prove that the plaintiff's have no legal right seek the partition in the suit schedule properties in view of the relinquishment of right by the plaintiff's mother under the registered relinquishment deed bearing S.R.No.348. 78-79 dated 29-01-1979.

2. I.A supported with the affidavit of the defendant No.12 wherein stating that, the above suit is filed by the plaintiff for the partition and separate possession of the properties mentioned in the schedule. That the defendant No.12 has taken the specific contention that the suit is not maintainable on the ground that the plaintiffs mother has relinquished her part of the share under the registered relinquishment deed bearing S.R.No.347/78-79 through a registered document and further it is the specific case that the plaintiffs have no legal right seek the partition as they are the



joint family members and in view of the registered relinquishment deed the plaintiffs have no legal right and there is no cause of action to the suit. Hence the suit can be dismissed only by framing necessary issues as stated in the schedule. If the annexed application is allowed and additional issues as contended in the written-statement is framed no hardship or injury will be caused and further the framing of issue will met the contention of the written-statement matter in dispute will be resolved by framing necessary issues. Hence prays to allow the annexed application.

3. I.A. No.XX opposed by plaintiffs by filing written objections contending that, the application is not maintainable either in law or on facts. This Court has already framed issues by considering the written-statement of defendant No.12. The defendant No.12 has not taken specific plea regarding maintainability of suit on the ground of alleged relinquishment deed dated 29-01-1979. Hence in the absence of specific plea regarding this aspect, the proposed issue cannot be framed.



The application has been filed by the defendant No.12 with an intention to drag on the proceedings. Hence prays to dismiss the I.A. application.

4. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration.

POINTS

1. Whether the applicant/defendant made out grounds to frame additional issues?
2. What order ?
5. My findings to the above points are as under.

Point No.1: In the Affirmative.

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

REASONS

6. **Point No.1:** The plaintiff filed the suit against the defendants for the relief of partition and separate possession. Now the case is posted for plaintiff evidence at this stage applicant/defendant no.12 filed present application to frame additional issues.



7. Already on the basis of pleadings this court framed issues. But now it is the contention of applicant/ defendant No.12 that in his written statement defendant 12 has taken specific contention that the suit is not maintainable, the ground that the mother of the plaintiff has relinquished her part of share under registered relinquishment deed bearing S.R.N.347/78-79, hence plaintiffs have no legal right to seek the partition. There is no issue with respect to the same, hence prays to frame additional issues shown in the application. This is suit for partition, and the burden is on the plaintiff to prove they are entitled for the share in the suit schedule property. But the defendant No.12 taken contention that the mother of the plaintiffs executed register relinquishment deed, hence plaintiffs have no right to seek partition. Hence the burden is on the defendant to prove the same. And defendant No.12 taken contention in his written statement in para 30. Admittedly no issue framed on this point. Hence it is necessary to frame issue on this point. It is the settled



principles of law that, the court is required to frame issues regarding the disputed facts and regarding the question of law. Hence at this stage the framing of additional issue is necessary to adjudicate the matter in dispute. The provision of law order 14 rule 5 clearly empowers this court to amend the issues or to frame additional issues at any stage of the suit before passing the decree. Therefore, this court comes to the conclusion that, the applicant/defendant No.12 has made out sufficient grounds to frame additional issue. Hence, **point No.1 is answered in the affirmative.**

8. **Point No.2:** In view of the discussions made above this court proceeds to pass the following:

ORDER

I.A.No.XX filed by the applicant/
defendant No.12 under Order XIV Rule 5
R/w Section 151 of CPC is hereby allowed.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 21st day of March, 2024)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura. Itinerate at Koppa.