

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
KOLLEGALA.**

Dated 09th day of June, 2025

O.S. No. 20/2016

Plaintiff : Smt. Sarojamma

Vs.

Defendants : Smt. Savithramma & others

I.A. No. XX

Applicant : Jayamma - [Defendant No. 2]

Vs.

Opponent : Smt. Sarojamma - [Plaintiff]

ORDERS ON I.A. No. XX

This application is filed by defendant No.2 under Order XIV Rule 5 R/w Section 151 of the Code of Civil Procedure seeking to frame an additional issue as follows:

“Whether the defendant No.2 proves that suit schedule properties item No.2 and item No.6 are his self-acquired properties, as pleaded in paragraphs 19 to 22 of the written statement?”

2. In the accompanying affidavit it is stated the plaintiff has filed a suit for partition and separate possession of the suit schedule properties, claiming all of them as joint family properties. However, in the written statement filed by defendant No.2, a specific plea has been raised that suit item Nos.2 and 6 are his self-acquired properties, and not part of the joint family estate. It is therefore contended that unless this issue is framed and tried, the real controversy between the parties cannot be effectively adjudicated. Therefore prays for allow the application.

3. The application is opposed by the plaintiff on the ground that the claim of self-acquisition is false and unsupported by any documentary evidence. It is further contended that Ex.D4 establishes that item No.2 is ancestral in nature and derived through ancestors of the parties, and as such, any subsequent settlement deed or gift deed executed by the 2nd defendant in relation to such properties is invalid and not binding on the plaintiff. Hence prayed for dismissal of the application.

4. Heard the learned counsel for both parties.

5. The following point arise for my consideration:

1) *Whether applicant has made out any ground to allow the application?*

2) *What order?*

6. My findings to the above points are:

Point No.1: In the affirmative

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

REASONS:

7. Point No.1: This application is filed by defendant No.2 under Order XIV Rule 5 R/w Section 151 of the Code of Civil Procedure seeking to frame an additional issue on the ground that defendant No.2, a specific plea has been raised that suit item Nos. 2 and 6 are his self-acquired properties, and not part of the joint family estate. It is therefore contended that unless this issue is framed and tried, the real controversy between the parties cannot be effectively adjudicated. As per the settled legal position, the Court at any stage of the proceedings may frame additional issues as may be necessary for determining the matters in controversy between the parties. It is not the role of the Court at this stage to decide the merits of the defence raised, but only to ascertain whether such a plea arises from the pleadings and whether its determination is necessary for a proper adjudication of the suit.

8. In the instant case, the 2nd defendant has taken a specific plea in the written statement regarding the self-acquisition of item Nos. 2 and 6. This plea is a material proposition of fact which, if proved, may exclude those properties from partition. Therefore, the framing of the additional issue as sought is both relevant and necessary to determine the true nature and status of these properties.

9. The objection raised by the plaintiff regarding lack of documents or falsity of the defence pertains to the merits of the issue, which can only be decided after trial and evidence, and not at the stage of framing issues. Accordingly, the application deserves to be allowed. Hence I answer point No. 1 in the affirmative.

10. Point No. 2: For the aforesaid reasons, I proceed to pass the following:

ORDER

The I.A. No. XX filed by the 2nd defendant under Order XIV Rule 5 R/w Section 151 is allowed.

The following additional issue framed and added to the existing issues:

“Whether the defendant No.2 proves that suit item Nos.2 and 6

properties are his self-acquired properties as pleaded in paragraphs 19 to 22 of the written statement?”

No order as to costs.

(Dictated to the stenographer directly on the system, transcribed by her, corrected and then pronounced by me in the open Court on 09th day of June, 2025).

(SUNITHA)

Senior Civil Judge and JMFC,
Kollegala.