

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L.HONOLE, B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE AND JMFC, KALAGHATAGI**

DATED THIS 06TH DAY OF NOVEMBER 2025

O.S. No.28/2022

PLAINTIFFS :

Poornima D/o Achuthrao Desai
and others

(Sri. R.G.N., Adv)

Vs

DEFENDANTS:

Achuthrao Krishnarao Desai
and others

(D-1-Sri. V.R.P., Adv)

(D-2(b to e)-Sri. P.S.N., Adv)

(D-3(a) to (d) dead)

(D-4 & 5-Sri. S.I.K., Adv)

PARTIES TO IA No.21

APPLICANT:

Anita D/o Achuthrao Desai and others.

Vs

OPPONENTS:

Achuthrao Krishnarao Desai and others

ORDERS ON I.A. NO. 21

The plaintiffs have filed this application u/o 14 rule 5 of CPC for framing additional Issue No.1 to 9.

2. This application is supported by the affidavit sworn to by the plaintiff No.3 wherein it is contended that this court has framed issues on the basis of pleadings. The defendant No.2(b) to (e) have filed written statement taking specific contention about relinquishment deed dated 02.01.1943 and claiming right over suit property is illegal. It is submitted that father name of defendant No.2(b) (e) is not in the relinquishment deed and mutation extract dated 17.07.1969 and not signed by legal heirs and there is no adoption in the relinquishment deed. Therefore, burden lies upon defendants to prove their contention. The additional issues are necessary to decide the matter in controversy between parties. Hence, prays for allowing the application.

3. The defendant No.2(b) to (e) have filed objection denying the application and affidavit filed by the plaintiff as false and not maintainable. It is contended that the issues framed and burden was shifted on plaintiffs. Framing of additional issues is not essential and no question of recasting of issues as burden is on plaintiffs. The plainiffs are filing one by one application to drag on the matter and not

interested to proceeding the matter. The plaintiffs are trying to shift the burden on defendants and same is not permissible under law. Therefore, prays for dismissal of application with cost.

4. Heard the arguments.

5. The following point arise for my consideration.

1. Whether additional issue No.1 to 9 as sought in the application are necessary to adjudicate upon the matter in controversy between parties?

2. What order?

6. My answer to above point is in the negative for the following...

REASONS

7. POINT NO.1: The plaintiffs have filed suit for partition and separate possession. After compeltion of cross examination of DW.2 the plaintiffs have filed this application for framing additional issues. I have gone through the additional issues sought by the plaintiffs. The plaintiffs have put burden upon defendants to prove the relinquishment deed dated 02.01.1943 and mutation extract dated 17.07.1969 and adoption of late Madvachar Gudi.

8. This court has framed issues based on pleadings of parties. The matter is at the flag end for further evidence of defendants. It is the duty of the court to frame proper issues based on pleadings of parties and documents placed on record. In the

present case on hand alleged relinquishment deed has not been produced by plaintiffs or defendants. Mere suggestions made to the witness during the course of cross examination by the defendants or contention taken in the written statement is not ground to shift the burden upon the defendants. Defendants have not sought counter claim over the suit properties. Therefore, shifting burden of proof of relinquishment deed dated 02.01.1943 on defendants is not tenable. The proposed issues as sought by the plaintiffs are not necessary to decide the matter in controversy between parties.

9. It is settle law that the plaintiffs have approached the court and it is burden on them to prove their case and they cannot rely upon defects of the case of the defendants. Moreover, if any issues are necessary it can frame at any stage of the trial before passing of judgment. It appears that plaintiffs to drag on the matter have filed this untenable application and same is liable to be dismissed with cost. Accordingly, I have answered point No.1 in the negative.

10. POINT NO.2: Hence, court proceed to pass the following:

ORDER

I.A.No. 21 filed by the plaintiffs U/o 14 Rule 5
CPC is hereby rejected with cost.

(This Order is dictated to the stenographer directly on
computer, then corrected and pronounced by me in the
open court on this **06th day of November 2025**).

(R.L.HONOLE)
SENIOR CIVIL JUDGE & JMFC,
KALAGHATAGI

ADDL.ISSUE

2. Whether the defendants No. 1 to 5 prove that they have perfected the title over the suit schedule item No.4 property by way of adverse possession?

SR.CIVIL JUDGE & JMFC.,

KALAGHATAGI