

**ORDERS ON IA No.11 filed U/O 14 Rule 5**  
**OF C.P.C.**

The learned counsel for defendant No.6 has filed IA.No.11 U/O 14 Rule 5 of C.P.C. to rectify the additional issue which is framed as “Whether the defendant No.6 proves that, the plaintiff created a will dated 18-09-2014” be strike out and issue be framed as “Whether the plaintiff proves that, deceased Javahar has executed will on 18-09-2014” be framed.

The said application is accompanied by the memo of facts of counsel for defendant No.6.

The learned counsel for plaintiff filed objections contending that, the facts and circumstances of the affidavit under IA No.11 is not maintainable in the eyes of law. This court has framed proper issues. As per order of Hon’ble High Court of Karnataka in WP No.148247/2020 dated 26-11-2021, the WP came to be dismissed. Hence the application is liable to be dismissed.

Heard arguments of learned respective counsels on IA No.11. Perused material available

on record. This is a suit for declaration and injunction.

It is the case of the defendant No.6 that, the execution of will by deceased Javahar is denied.

On perusal of the records it is seen that, during pendency of suit the original plaintiff has expired. The LR of Javahar, Shri Vijayakumar has come up with contention that the deceased plaintiff Javahar has executed will on 18-09-2014. Looking to facts and circumstances of the case it is the case of the plaintiff that, Javahar S/o Ambasa Pujari has executed will with respect to CTS No.4271 of Betageri village in his brother's favour i.e., Vijayakumar S/o Ambasa Pujari and as such Vijayakumar S/o Ambasa Pujari has become owner of suit schedule property by virtue of will. Under these facts and circumstances of the case in my humble opinion issue is to be framed casting burden on the LR of plaintiff i.e., Vijayakumar S/o Ambasa Pujari. As such additional issue is to be re-casted as "Whether Vijayakumar S/o Ambasa Pujari proves that, deceased Javahar

has executed will in favour of his brother Shri Vijayakumar S/o Ambasa Pujari on 18-09-2014 with respect to CTS No.4271 measuring 293 square yard of Betageri village.” Accordingly IA No.11 is allowed. Additional issue is re-casted as under:

“Whether Shri Vijayakumar S/o Ambasa Pujari proves that, deceased Javahar has executed will in favour of his brother Shri Vijayakumar S/o Ambasa Pujari on 18-09-2014 with respect to CTS No.4271 measuring 293 square yard of Betageri village?”

Under these circumstances no order as to costs.

Date: 06-06-2023

**Prl. Senior Civil Judge & CJM.,  
Gadag.**

