

IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.
AT ARSIKERE

: PRESENT :

Smt. E. Chandrakala, B.Sc, LL.M.,
Senior Civil Judge & JMFC,
Arsikere.

DATED ON THIS THE 23rd DAY OF JANUARY 2017

ORIGINAL SUIT No.14/2014

Plaintiffs/
Applicants : 1) B.M. Sadashivappa
S/o Late Mulappa B.M.,
Aged about 70 years, R/o No.33,
4th Cross, 2nd Main, B.K. Nagar,
Yeshwantpur, Bangalore and
others.

(By Sri P.V., Advocate)

-V/s-

Defendants/
Opponents : 1) N.P. Vijayakumar
S/o Late N. Padadappa,
Aged about 61 years,
R/o Channakeshava Nilaya,
Shanti Marg, Opp: Panchamukhi
Ganapathi Temple, Maruti Nagar,
Arsikere and others.

(By Sri HSK, KAR, NAP & NDP, Advocates)

ORDERS ON I.A.No.XV

The plaintiffs have filed I.A.No.XV under order 14 rule 5 of CPC praying this Court to recast issue No.2 and strike off issue No.5 framed in the suit.

2. On the other hand, the defendants resisted the application orally.

3. The plaintiffs have filed written arguments in the suit.

4. I have perused the I.A., Affidavit and other material placed on record.

5. In the light of the above material on record, the points that arise for my consideration are:

1) *Whether the plaintiffs have made out sufficient reasonable grounds to allow I.A.No.XV filed under order 14 rule 5 of CPC?*

2) *What order?*

6. My findings to the above points are as follows:

Point No.1 : Partly in the affirmative

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

7. **Point No.1:** It is stated in the annexed affidavit to I.A. that while framing issues in the case the Court has framed issue No.5 which is not correct since the 1st defendant has not raised defense about the point of limitation. It is further stated that the issue No.2 is to be r casted since there is ambiguity in the issue.

8. On perusal of the pleadings of the parties the Court has framed issues 1 to 6. To prove the issue No.2 is the burden rests on the 1st defendant that the item Nos.1, 2, 3, 4, 10 to 12 and 15 were sold to discharge the debt. The 1st defendant in the written statement has contended that he sold the properties towards discharge of family

debt. On the basis of said pleadings the Court has framed the said issue. Of course there is some mistake in the issue in regard to item of the properties. As such, it is correct to recast the issue No.2 in the suit.

9. Further, the 1st defendant in para 11 of the written statement has specifically contended that the suit is barred by law of limitation. Hence, the Court has rightly framed issue No.5. There is no reason to strike off the said issue. Therefore, I have reached to the conclusion that only the issue No.2 is to be recasted. Thus, I answer the above point No.1 partly in the affirmative.

10. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.XV filed by the plaintiffs
under order 14 rule 5 of CPC is hereby
partly allowed.

The issue No.2 is amended.

No order as to costs.

(Dictated to Stenographer, transcribed by him, corrected and
then pronounced by me in open Court on this 23rd day of
January, 2017)

(E. Chandrakala)
Senior Civil Judge & JMFC,
Arasikere.