

ORDERS ON IA NO.9 AND 10

Advocate for defendant No.1 has filed the application u/s 151 of CPC seeking permission to file objections to IA No.7 and 8 for the reasons stated in the accompanying affidavits. Defendant No.1/Sunita W/o Prakash Malavade sworn to an affidavit and has stated that after filing of IA No.7 and 8, the case was posted for hearing on IA No.7 and 8 instead posting the stage for objections to IA No.7 and 8. Hence, she sought permission to file objections to IA No.7 and 8.

2. Defendant No.6 opposed the IA No.9 and plaintiff opposed the IA No.10 by filing the objections. According to them no sufficient grounds made out to allow IA No.9 and 10. Hence, prayed to dismiss both IA's.

3. In the light of contentions taken in IA No.9 and 10 and in the objection statement perused the order sheet and noticed that on 21.07.2019, defendant No.6 and plaintiff have respectively filed IA No.7 and 8 u/o 14 Rule 5 R/w Sec.151 of

CPC for framing additional issues. As per the order sheet on that day case is posted for hearing on IA No.7 and 8. As contended in IA No.9 and 10 the case not posted for objections to said IA's. Under such circumstances, in order to give an opportunity to defendant No.1 it is just and proper to grant permission to file objections to IA No.7 and 8. Accordingly, IA No.9 and 10 are allowed and objections filed by the defendant No.1 to IA No.7 and 8 are taken on record.

Prl. Sr. Civil Judge & CJM,
Haveri.

ORDERS ON IA NO.7 AND 8

The learned Counsel for defendant No.6 has filed IA No.7 and plaintiff has filed IA No.8 u/o 14 Rule 5 R/w Sec.151 of CPC to frame proposed issues as prayed in their respective IA's for the reasons stated in the accompanying affidavits. Defendant No.6/Smt. Geeta W/o Bongale sworn to an affidavit and has stated that defendant No.1 executed agreement of sale in

her favour and since from 2004 she is in possession of the suit D and E schedule properties as purchaser. In that regard she has taken contention in para No.5 and 6 of the written statement, but no issues framed. Hence, prayed to frame the proposed additional issues as sought in IA No.7. Plaintiff/Smt. Jayshree Malavade sworn to an affidavit and has stated that suit schedule A to F properties are joint family properties of herself, deceased son Prakash Ramachandra Malavade and defendant No.1. In para No.15(C) of her written statement that the suit schedule B to F properties are self-acquired properties of defendant No.1. Issue No.1 is not proper framed and said issue does not covered pleadings of the parties in this suit. Hence, prayed to frame the proposed additional issues as narrated in IA No.8.

2. The learned Counsel for the defendant No.1 opposed the both IA No.7 and 8. According to him Court has framed the issues upon the pleadings of the parties and issues sought to frame in IA No.8 is covered in issue No.1 framed

by this Court and in view of plaintiff has filed the suit for partition, the question of framing of proposed issues as sought in IA No.7 is not necessary. Hence, prayed to dismiss both applications.

3. The learned Counsel for plaintiff and defendant No.1 filed written arguments. Even after giving sufficient opportunities defendants No.2 to 6 fail to file written arguments.

4. Perused the material on record.

5. From the above said facts, the points arise for my consideration are:-

1. Whether the defendant No.6 has made out sufficient grounds to frame proposed additional issues as prayed in IA No.7 filed u/o 14 Rule 5 R/w Sec.151 of CPC?

2. Whether the plaintiff has made out sufficient grounds to frame proposed issues as prayed in IA No.8 filed u/o 14 Rule 5 R/w Sec.151 of CPC?

3. What order?

6. My answer to the above points are as under:-

Point No.1 & 2: *In the Negative*

Point No.3 : *As per final order, for the following:*

R E A S O N S

7. At outset it is necessary to note that plaintiff has filed this suit for the relief of partition and separate possession. Defendant No.6 and plaintiff have filed I A No.7 and 8 u/o 14 Rule 5 of CPC. As per order 14 of CPC, the issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Each material proposition affirmed by one-party and denied by the other shall form the subject of distinct issue.

In the light of the written argument submitted by the learned Counsel for plaintiff and defendant No.1 let me consider point No.1 and 2 separately.

8. **Point No.1**:- Defendant No.6 filed IA No.7 to frame the proposed additional issues as per the case made out by her in para No.5 and 6 of

her written statement. It is worth to note that even after granting sufficient opportunities defendant No.6 neither addressed the arguments nor filed written argument to demonstrate that framing of proposed additional issues are necessary in this case.

9. As noted supra, the plaintiff has filed this suit for the relief of partition and separate possession. In view of the material proposition affirmed by the plaintiff and denied by the defendants issues are framed by my predecessor in office. In the written statement, defendant No.6 has taken several contentions but mere taking the contention by the defendant No.6 in the written statement or filing the IA No.7 itself is not sufficient ground to frame issues as sought by the defendant No.6.

10. Even otherwise also in this case only on the basis of defence taken by the defendant No.6 at para No.5 and 6 of her written statement is not sufficient to frame proposed additional issues as prayed by her. The grounds made out in IA No.7 are not sufficient to frame proposed additional

issues. Accordingly, I answer the point No.1 in the negative.

11. **Point No.2:-** According to plaintiff, issues are not framed as per the allegations made in para No.9 and 10 of written statement of defendant No.1. Therefore, plaintiff has filed this application to frame proposed issue. On going through the plaint averments and written statement filed by defendant No.1 my predecessor in office has framed the issues. In this case Issue No.1 is framed whether the plaintiff proves that suit properties are self acquisition of her deceased son Prakash Ramachandra Malavade purchased in the name of 1st defendant. This issue covered the contention taken by the plaintiff with regard to the additional issues. Even an additional issue is framed as sought by the plaintiff in that case also said issues have to be discussed along with the issue No.1. Under such circumstances, in the considered opinion of this Court in view of framing of issue No.1 which covers proposed issue it is not necessary to frame issues as

sought by the plaintiff. Hence, I answer the point No.2 in the negative. s

12. **Point No.2**:- In view of my answer on point No.1 and 2, I proceed to pass the following:

ORDER

IA No.7 and 8 filed by defendant No.6 and plaintiff u/o 14 Rule 5 R/w Sec.151 of CPC are hereby dismissed. No order as to cost.

It is made clear that as the suit is of the year 2014 and therefore, parties shall give their co-operation to dispose of the case on merits without seeking any adjournments. Parties to the suit shall proceed with the case without seeking any excuse. Failing on the part of parties to proceed with the case appropriate orders will be passed without showing any leniency.

For plaintiff evidence call on by

Prl. Sr. Civil Judge & CJM,
Haveri.

