

## **ORDER ON IA NO.4**

When the case was posted for plaintiff evidence, the application under consideration is filed by the defendant No.1 U/o 14 rule 5 R/w Sec. 151 of CPC, seeking to frame the additional issues with regard to non joinder of necessary parties and non inclusion of all the joint family properties.

### **2. Brief facts of the case necessary for the purpose of disposing the application is as under :**

The plaintiff has filed this present suit for partition and separate possession against the defendants. The suit schedule properties are the undivided Hindu joint family properties and claimed his 1/4<sup>th</sup> share in the same. Per contra, the applicant has filed his written statements along with counter claim. Accordingly, issues were framed and posted the case for trial.

**3.** It is contended in the application supported with affidavit of defendant No.1 stating that, at para No.2 to 4 he has specifically contended non joinder of necessary parties and non inclusion of all the family properties. But, no issues were framed regarding the same and application is required to be allowed. Among these grounds, he sought to allow the application.

**4.** The application is resisted by plaintiff and contended in his objection that, the application is not maintainable either in law or on facts and liable to be dismissed. Further, he contended that, there is no specific denial and assertion of non joinder of necessary parties and non inclusion of all the family properties. In the absence of any such specific pleadings, the proposed issues cannot be

framed. Hence, sought for dismissal of the application with cost.

**5.** Heard the counsel of either side. Perused the rival pleadings.

**6.** After careful perusal of the averments in affidavit accompanying the application, the following points arise for the consideration of this court:

**1)** Whether any specific assertion is made out in the written statement to frame the proposed addl. Issues .?

**2).** What order.?

**7.** Upon careful perusal of the plaint averments and after giving its anxious consideration to the arguments canvassed and pleadings, this court answers the afore raised points for consideration as under:

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

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

**: REASONS :**

**8. POINT NO.1;-**

**8.1).** The provisions that the plaintiff is seeking to invoke here is Order XIV Rule 5 of Civil Procedure Code, and the same is clear from the fact that the grounds urged by the applicant is that, since the plaintiff has left out necessary parties and excluded other family properties, the application has to be allowed and proposed issues are to be framed. So, this court once again needs to analyze the rival pleadings of either side and then conclude whether the application is liable to be allowed or not.

**8.2).** In this endeavor it would be worthwhile to look into the very

provisions. Order 14 of the Code of Civil Procedure lays down rules for the settlement of issues and determination of suits on issues of law or on issues agreed upon, Under Rule 1 issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Rule 2 gives a discretion to the court to decide a particular issue as a preliminary issue. Rule 3 given a discretion to the court to frame issues on the basis of the allegations made on oath by the parties or by the persons present on their behalf or made by the pleaders of such parties the allegations made in the plaint or in answer to interrogatories delivered in the suit and on the basis of the contents of documents produced by either party. Rule 4 gives power to the court to examine witnesses or documents before framing issues. By Rule 5 power is conferred on the court to amend and strike out issues. Further power is given under Rule 5 to frame additional issues on such terms as it thinks fit or as may be necessary for determining the matter in controversy between the parties.

**8.3).** The power to frame additional issues is a discretionary power of the trial court. Additional issues may be framed if the court thinks necessary for determining the matter in controversy. By an order refusing to frame additional issues or allowing an application for framing of additional issues no right or obligation of the parties in controversy is adjudicated upon by the court. It may be noted that, issues are generally framed on the basis of pleadings of the parties wherein a material proposition of fact or law is affirmed by one party and denied by the other and not on basis of any report of the Court Commissioner who is appointed after the filing of the pleadings by the parties. This proposition is clearly made out under Order XIV of C.P.C.

**8.4).** Before plunging to discuss the application on merits, it is necessary to point out that, the plaintiff claimed his 1/4<sup>th</sup> share in the suit property and claimed parties to the suit are only joint family members and suit properties are only available for partition. The present application is filed by defendant No.1 on the ground of his specific assertion. This court has gone through the pleadings of written statement filed by defendant No.1, wherein there is no specific pleadings to show that, who are the necessary parties to the suit and which properties were left out by the plaintiff in the present suit. Even there is no specific denial or assertion of genealogy prepared by the plaintiff. Hence, without going any further discussions this court is of the opinion that, in the absence of any specific pleadings by defendant No.1, the proposed issues are not required for adjudication of this case. Hence, this court proceeds to answer the point No.1 in the **Negative**.

**9.POINT NO.2:**

For the aforesaid reasons, this court answers the points No.3 as under, by passing the following:

**ORDER**

“IA No.4 filed U/O XIV Rule 5 of CPC by the defendant No.1 is hereby dismissed.

Call on for plaintiff evidence as a last chance by 24.07.2025.

Sd/-  
Prl. C.J. & I Addl. JMFC.,  
Ranebennur