

**ORDER ON IA No.8**

The defendants have filed IA No.VIII under order 14 Rule 5 Of CPC for framing the proposed issues as additional issues.

2. The defendant No.3 in the affidavit accompanying with IA stated that they have filed written statement wherein they clearly stated that the plaintiff has not paid proper court fee and suit is hit by res-judicata. But this court has not framed the issues on court fee and res-judicata. Hence, he prayed to frame the proposed issues as a additional issues.

3. The plaintiff counsel submits if necessary, the court may framed the additional issues.

4. Head both side.

5. The plaintiff has filed this suit for declaration of ownership and injunction in respect of suit property bearing Gram Panchayath VPC No.170/B measuring 23 X 90 ft by contending that the suit property is owned and possessed by the plaintiff by virtue of inheritance but, the defendants

colluding with the Panchayath created new property No.21/C1 which was not in existence at all. On the basis of the said property filed suit in OS No.136/1996 against the plaintiff and others and obtained ex-parte order. He prepared RA No.90/2015. On the basis of decree the defendants have been interfering in the possession of the plaintiff over the suit property. The defendants have produced the certified copy of plaint, written statement, judgment and decree in OS No.136/1996. On careful perusal of the case it appears that the present defendant's father Bangarappagouda S/o Rudragouda Patil filed suit in OS No.136/1996 for permanent injunction against the Basavantappagouda Patil and others wherein the present plaintiff was defendant No.3. The said suit was in respect of VPC No.21/C measuring 23 X 85 ft. The said suit was partly decreed. The court is grant the permanent injunction but rejected the prayer of mandatory injunction. However, the subject matter of the said property and present suit property are one and the same. But the said suit was only mere

injunction. The present suit is declaration and injunction. However, whether principles of res-judicata is applicable or not is to be decided. To decide the same it requires trial. Hence, it is necessary to allow the IA. Hence, I proceed to pass the following;

**ORDER**

IA No.8 filed under order 14 Rule 5 of CPC by defendant is hereby allowed.

The proposed issues are framed as additional issues.

For plaintiff evidence, Call on : 14.07.2022.

CJ & JMFC., Savanur.