

ORDERS ON I.A. NO.II FILED BY THE
APPLICANT UNDER ORDER XIV RULE
V R/W 151 OF CPC

The counsel for the applicant/plaintiff has filed this application i.e., I.A. No.II u/o 14 rule 5 r/w 151 of CPC for seeking to delete the issue No.4 framed in this suit.

2. In the accompanying affidavit the plaintiff has stated that, he has filed this suit against the defendants seeking relief of Mandatory injunction with respect to the suit schedule property. The 1st defendant has filed written statement and denied the plaint averments. Thereafter on 04.12.2023 this Court has framed six issues. The issue No.4 framed is with respect to the Specific Performance of contract i.e., *"Whether the Plaintiff is entitled for the relief of Specific Performance of Contract"*

3. Now the present matter is posted for leading plaintiff evidence and during the preparation of leading evidence, the plaintiff came to know that this Hon'ble Court while framing the issues due to inadvertence has framed Issue No.4 with respect to specific performance of contract and as such the issue No.4 as to be deleted for the proper adjudication of the contract and also to avoid multiplicity

of proceedings. If the present application is not considered, great hardship will be caused to the plaintiff, which cannot be compensated in any manner. Hence, prays to allow the application.

4. On the other hand, the defendants' counsel has not filed objections inspite of giving opportunities, hence the objection to IA No.II taken as not filed.

5. Heard the plaintiff counsel on IA No.II.

6. On careful reading of entire case file and order sheet it came to notice that the plaintiff has filed the present suit against the defendants for seeking relief of Mandatory injunction in respect of the suit Survey schedule property. But at the time of framing of issues, this Court has framed issue No.4 as "*Whether the Plaintiff is entitled for the relief of Specific Performance of Contract*". As the plaintiff has not sought for the relief of specific performance of contract, the said Issue No.4 is not necessary in this case.

7. **U/o 14 rule 5 of CPC-** Power to amend or strike out issues. U/o 14 rule 5(1) the court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, on such amendments or

additional issues as may be necessary for determining the matters in controversy between the parties shall be so made are framed.

8. In the present case the striking of issue No.4 is very much required determining the matters in controversy between the parties. Hence, I proceed to pass the following:

ORDER

I.A. No.II filed by the applicant/plaintiff under Order 14 rule 5 r/w 151 of CPC is hereby allowed.

The Issue No.4 framed in this suit is hereby strike out/deleted.

For plaintiff evidence, call on 29.10.2024.

Addl.C.J & JMFC.,
H.D.Kote.