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**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl.Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 24th day of July 2025.

OS No.102/2018

- Plaintiffs: 1. Sri.Naveenkumar S/o C.N.Swamy
@ Swamy, Aged 53 years, R/at Chikkadanahalli
Village, Bilikere Hobli, Hunsur Taluk, Mysore
District.
2. Sri.Prasann Kumar, S/o Late C.N.Swamy
@ Swamy, Aged 53 years, R/at Chikkadanahalli
village, Bilikere Hobli, Hunsur Taluk,
Mysore District.
3. Smt.Renuka, D/o Late C.N.Swamy @ Swamy,
and also W/o Puttaswamy, Aged 59 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

Now R/at Arakere Village, Kasaba Hobli,
Kalenhalli Post, K.R.Nagara Taluk,
Myosre District.
4. Smt.Gayathri, D/o Late C.N.Swamy @
Swamy and also W/o Shivanna, Aged 57 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

5. Smt.Mynavathi, D/o Late C.N.Swamy
@ Swamy and also W/o Shivanna,
Aged 55 years, R/at Chikkadanahalli Village,
Bilikere Hobli, Hunsur Taluk, Mysore District,

Now R/at Vадrahalli Village, Bilikere
Hobli, Halebeedu Post, Hunsur Taluk,
Mysore District.
6. Smt.Meenaksh, D/o Late C.N.Swamy
@ Swamy and W/o Prakash, Aged 50 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

Now R/at Vajamangala Village, Varuna Hobli,
Mysore Taluk, Mysore District.
7. Smt.Savitha, D/o Late C.N.Swamy @ Swamy,
and W/o Late Raju, Aged 41 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,
8. Smt.Gowramma, D/o Late C.N.Swamy @
Swamy, Aged 70 years, R/at Chikkadanahalli
Village, Bilikere Hobli, Hunsur Taluk,
Mysore District,
9. Sri.Shekara, S/o Late C.N.Shiaiah @ Shivappa,
Aged 50 years, R/at Chikkadanahalli Village,
Bilikere Hobli, Hunsur Taluk, Mysore District,
10. Sri.Mahesha, S/o Late Shivaiah @ Shivapp,
Aged 43 years, R/at Chikkadanahalli Village,
Bilikere Hobli, Hunsur Taluk, Mysore District,
11. Smt.Mangalamma, D/o Late Shivaiah @ Shivappa
and W/o Late Mahadevappa, Aged 55 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

Now R/at Shanaboganahalli Village,
Doddakamarahalli Post, Kanagal Hobli,
Periyapatna Taluk, Mysore District.

12. Smt.Gowramma, D/o Late Shivaiah @ Shivappa,
and W/o Late Ninganna, Aged 52 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

Now R/at Jabagere Doddakamarahalli Post,
Gavadagere Hobli, Hunsur Taluk, Mysuru
District.

13. Smt. Suma D/o Late Shivaiah @ Shivappa,
and W/o Kumara, Aged 40 years, R/at
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

Now R/at Ganjigere Village, Bookanakere Hobli,
K.R.Pet Taluk, Mandya District.

14. Smt.Parvatamma, D/o Late Ningappa @
Lingappa and W/o Late Maridevappa,
Aged 58 years, R/at Althalhundi Village,
Naganahalli Post, Kasaba Hobli, H.D.Kote
Taluk, Mysore District.

15. Smt.Vishalamma, D/o Late Ningappa
@ Lingappa and W/o Late somanna,
Aged 51 years, R/at Chikkadanahalli Village,
Bilikere Hobli, Hunsur Taluk, Mysore District,

16. Smt.Sharadamma, D/o Late Ningappa
@ Lingappa and W/o Prakasha, Aged 48 years,
R/at Sangama Nilaya, 2nd Cross, Basavanagudi
Layout, Shimoga Town, Shimoga District.

17. Smt.Sunanda, D/o Late Ningappa @ Lingappa,
and W/o Raju, Aged 46 years,
R/at Chikkadanahalli Village, Bilikere Hobli,
Hunsur Taluk, Mysore District,

-Vs-

- Defendants:
1. Sri.K.Badari Prasad, S/o T.Krishna, Aged 50 years, R/at #50,1/B,1st Main, Saraswathipuram, Mysuru – 570009.
 2. Sri.M.P.George, S/o M.C.Pothen Aged 55 years, R/at Manamel Finger Post, Ooty, Tamilnadu,
 3. Sri.M.O.Abrahim, S/o M.C.Thampi, Aged 54 years, R8at Manamel Farm, Bogadi Village, Kasaba Hobli, Myosre Taluk, Mysuru District.
 4. Smt.Marian Chandy, W/o Sri.Chandy Georg, Aged 65 years, R/at #55, Manamel, Hayness Road Nagar, Bengaluru – 5600025.
 5. Smt.Chinnu Abraham @ Chinnu Alexander W/o Late M.O.Alexander, Aged 54 years, R/at Manamel Farm, Bogadi Village, Kasaba Hobli, Mysore Taluk, Mysuru District.
 6. Sri.Kithin Alexander, S/o Late M.O. Alexander, Aged 32 years, R/at Manamel Farm, Bogadi Village, Kasaba Hobli, Mysore Taluk, Mysuru District.
 7. M/s.Divya Infra Tech Pvt. Ltd., Having Office at #1, ‘Divya Arcade” Kantharaj Urs Road, Saraswathipuram, Mysore, Reptd. By its Director Sri.M.S.Harish Shenoy.

1.	Provision under which the application is filed	:	Under Order 14 Rule 5 of CPC
2.	Relief sought for	:	To recast issue No.8 and to frame seven additional issues

3.	The date on which the application is filed	:	03.08.2024
4.	Number of the application	:	IA No.XIV
5.	The date on which the objection is filed by opponent	:	30.08.2024
6.	The date on which the orders passed on the said application	:	24.07.2025

ORDERS PASSED ON IA NO.XIV

When the case is posted for defendants side arguments, the learned counsel for defendants No.2 to 6 filed IA No.XIV under Order 14 Rule 5 of CPC to recast issue No.8 and to frame seven additional issues.

2. The application is supported with affidavit of the GPA holder of defendants No.2 to 6 wherein it is stated that, on perusal of the issues framed by this court it is noticed that, certain issues arising out of pleadings are not framed and issue No.8 has not been properly framed as per the plaint averments. The defendants have taken up specific contention about maintainability of the suit filed for partition without admitting share of defendants and there is wrong description of suit and previous sale deed of 1980 has not been challenged even though 1st defendant was impleaded as party and executed sale deed dated 24.03.1980 and there is also plea that one survey number is still standing in the name of Narayanaswamy and valuation of the suit as agricultural land is wrong in presence of conversion. It is also alleged that, at the time of framing issues pleadings of the defendants were

not considered. The maintainability of the suit aspect goes to very root of the case and it is necessary to frame issues on that aspect. It is just and necessary to frame additional issues which are relevant and if the application is not allowed and additional issues are not framed and issue No.8 is not recasted defendants No.2 to 6 will be put to untold hardship. Hence, prayed to allow the application.

3. After filing of the application the learned counsel for the plaintiffs filed objection contending that, the application is not maintainable under law or on facts. The defendants have sworn to false affidavit and after completion of the pleadings this court has rightly framed the issues and after framing the issues and giving opportunity for production of documents and witnesses this court proceeded to record the evidence and after completion of both side evidence, when the case is posted for plaintiff side arguments the plaintiff filed written arguments before this court and when the case is posted for defendant side arguments this application came to be filed. It is further contended that, in order to protract the proceedings frivolous application is filed. On the basis of rival pleadings of the parties the court has framed proper issues and the power conferred under Order XV-A of the CPC to not taken into consideration. Hence, prayed to dismiss the application with exemplary costs.

4. Thereafter, heard arguments addressed by learned counsel for the plaintiffs and defendants and perused the case papers. After hearing the arguments and on perusal of the

case papers the points that arise for consideration are as hereunder:

POINTS

1. Whether defendants No.2 to 6 have made out sufficient grounds to re-cast issue No.8 and to frame seven additional issues as described in the application?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Negative

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

REASONS

6. **Point No.1:** The plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession and also sought for declaration that, the sale agreement dated 24.09.2012 and the sale deed dated 17.05.2013 are created by the defendants and sought for preliminary decree for partition of their 1/3rd share in the suit schedule properties.

7. After filing of the suit the defendants appeared before the court and filed their written-statement. In the written-statement defendants No.2 to 6 have categorically denied the case of the plaintiffs. They have also taken up the contention that, the plaintiffs have not included all the properties in this suit and defendants No.1 to 7 contended that, the suit for partition is not maintainable and also contended that, the property was sold in the year 1980 and

revenue records were changed at that time itself and there is no cause of action to file the suit. At para No.10 of the written-statement defendants No.2 to 6 contended that, the plaintiff has not challenged the sale deed.

8. It is also contended that, the suit for partial partition is not maintainable. On the basis of rival pleadings of the parties this court framed the issues on 16.08.2021. Thereafter, on 06.01.2023 it is mentioned in the order-sheet that, DW1 was present. On perusal of the pleadings and both the counsels Sri.SNK and BSY, Sri.SLG submits that, issues needs to be re-casted. Hence, issues re-casted on 02.02.2023 issues and thereafter posted for further cross-examination of DW1.

9. On 30.09.2023 defendant No.7 filed the written-statement and on the basis of written-statement of defendant No. 7 this court again framed additional issues on 23.11.2023. Thereafter, the evidence of defendants was completed and thereafter, plaintiffs counsel addressed oral arguments as well as filed written-arguments and when the case is posted for defendants arguments this application came to be filed to re-cast the issues. Defendants No.2 to 6 wants this court to re-cast issue No.8 and it is necessary to look into original re-casted issue No.8 framed by this court dated 02.02.2023 which reads as hereunder:

Whether the plaintiffs further prove that, plaintiff No.1 to 8 together are entitled for 1/3rd share, plaintiff No.9 to 13 together are entitled for 1/3rd share and plaintiff No.14 to 17 are

together entitled for 1/3rd share in the suit schedule properties by metes and bounds?

10. Now it is necessary to look into the proposed re-casted issue No.8 which reads as hereunder:

Whether the plaintiffs No.1 to 8 together are entitled for the relief of partition and separate possession of 1/3rd share, plaintiffs No.9 to 13 together are entitled for 1/3rd share and plaintiffs No.14 to 17 are entitled for remaining 1/3rd share in the suit schedule properties by metes and bounds?

11. The difference between original re-casted issue No.8 dated 02.02.2023 and proposed re-casted issue No.8 is only with regard to inclusion of words "For the relief of partition and separate possession and measuring 1/3rd share. Therefore, it clearly establishes that, in order to drag on the proceedings defendants No.2 to 6 wants this court to re-cast issue No.8 which is not at all tenable. Now it is necessary to look into proposed additional issues sought to be framed which reads as hereunder:

1. Whether the defendants No.2 to 7 prove that, the suit of plaintiffs for partition inter-se without admitting share of any of the defendants is maintainable in law?
2. Whether the defendants No.2 to 6 prove that, the suit of the plaintiff is not maintainable without challenging previous sale deed dated 24.03.1980 executed in favour of defendants No.2 to 4 and husband of defendants No.5 as contended in para No.3 of their written-statement?

3. Whether the defendants No.2 to 6 prove that the properties is Sy.No.88/1 is converted land and hence the plaintiffs are bound to pay court fee on the actual market value?
4. Whether the defendants No. 2 to 6 prove that, the suit property in Sy.No.85/1 of Doddakadanahalli Village, Hunsur Taluk even now stands in the name of one T.Narayanaswamy?
5. Whether defendants No.2 to 7 proves that, they are bonafide purchasers of the suit property?
6. Whether the defendants No.2 to 6 prove that valuation made under Section 35(2) is in correct when the plaintiffs and defendants are not in joint possession of the suit properties?

12. At this point it is very necessary to mention the issues re-casted on 02.02.202 and they are as hereunder:

1. Whether the plaintiffs prove that the sale deed of defendants No.1 to 6 in favour of defendant No.7 is void and not binding on the plaintiffs share?
2. Whether the plaintiffs further prove that the suit schedule properties are joint family properties of the available for partition?
3. Whether the plaintiffs further prove that they are in joint possession of the suit schedule properties?
4. Whether the plaintiffs further prove that the genealogical tree furnished by them pertaining the family of Mudinanjegowda is true and correct?

5. Whether the defendants prove that suit of the plaintiffs is barred by law of limitation?
6. Whether the defendants further prove that the court fee paid by the plaintiffs is not proper and insufficient?
7. Whether the plaintiffs are entitled for the relief of declaration and partition as prayed for?
8. Whether the plaintiffs further prove that plaintiff No.1 to 8 together are entitled for 1/3rd share, plaintiff No.9 to 13 together are entitled for 1/3rd share and plaintiff No.14 to 17 are together entitled for 1/3rd share in the suit schedule properties by metes and bounds?

13. It is further very important to note that, after lapse of two years after re-casting issues on 02.02.2023, defendants No.2 to 6 have come forward and filed this application. Already the proposed issues are involves in the issues re-casted on 02.02.2023. At the time of addressing the arguments the learned counsel for defendants No.2 to 6 relied upon the decision of Hon'ble High Court of Karnataka in

RFA No.1127/2006

Between: Smt.K.Neelamma V/s K.Shailaja

Wherein Hon'ble High Court of Karanataka held that,

“ Boundaries will prevail over the measurements.”

14. On the other-hand the learned counsel for the plaintiffs relied upon the decisions of Hon'ble High Court of Karnataka in

RSA No.2027/2007

Between: Smt.Kulsumbi V/s Smt.Mehaboobi and others

Wherein Hon'ble High Court of Karanataka held that,

“ The plaintiffs are not parties to the alienation that the alienation are not binding upon them or their alleged share in the properties and they need not seek for cancellation of the sale deed in the light of the proposition of law as stated supra in the judgments referred above the substantial question of law needs to be answered against the appellant”.

2023 (3) KCCR 2756

Between: Gajanan Shivaram Bhat V/s Vaijayanti Venkatesh Shanbhag

Wherein Hon'ble High Court of Karanataka held that,

“Plea of defendant that Court fee paid by plaintiff was not proper. Since document in respect of which plaintiff had sought relief of declaration was not signed by plaintiff, she was at liberty to give her own valuation and pay the Court fee on the said amount of Rs.1,000/- whichever is higher”.

15. The principles laid down in the decisions relied upon by the plaintiffs are aptly applicable to the facts of the case on hand. It clearly establishes that, the application is filed to drag on the proceedings. Already this court has framed

proper issues and the proposed issues includes in the issues re-casted on 02.02.2023. Therefore, this court comes to the conclusion that, defendants No.2 to 6 have not made out any grounds to re-cast the issues. Accordingly, point No.1 is answered in the Negative.

16. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.XIV filed by defendants No.2 to 6 under Order 14 Rule 5 of CPC is hereby rejected with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 23rd day of July, 2025)

(Anitha)

Prl.Senior Civil Judge and JMFC.,
Hunsur.