

O.S.22/2020

ORDER ON I.A. DATED 06.10.2023

The defendant No.2 has filed the application under Order 14 Rule 5 C.P.C. to modify the additional issue by deleting the additional issue and to frame the issue as detailed in the application. The application has been filed when the case was posted for cross-examination of P.W.1.

2. Plaintiffs have filed statement of objections through their counsel.

3. Heard.

4. The suit is for the relief of partition and separate possession of the suit schedule properties. Defendant No.4 got amended the written statement and the plaintiffs filed rejoinder. Thereafter this court framed an additional issue “whether the suit is hit by the principles of resjudicata?” But the defendant No.2 filed the present application and sought for deletion of the said additional issue and for framing regarding the maintainability of the suit in view of the judgment passed in R.F.A.No.1158/2006 by the Hon'ble High Court of Karnataka. A perusal of amended written statement of the defendant No.4 shows that the defendant No.4 has pleaded that the plaintiffs are not entitled for the relief from this court and that issue

has to be framed regarding the jurisdiction of the court.

5. In view of the present application, the additional issued framed on 08.09.2023 is deleted as the defendant No.4 pleaded that the judgment passed by the Hon'ble High Court binds this court and in case the plaintiffs do not accept the said judgment they have to challenge the said judgment before the court having jurisdiction and not before this court. Furthermore issue has to be framed in respect of the jurisdiction of this court to try the suit. Therefore, an additional issue regarding the jurisdiction of this court to try the suit in view of the judgment passed in R.F.A.1158/2006 is framed. Hence, the following:

ORDER

I.A. filed by defendant No.2 under Order 14 Rule 5 C.P.C. is allowed.

Additional issue dated 08.09.2023 is deleted and an additional issue is framed.

Senior Civil Judge, Nanjangud.
06.11.2023