

ORDERS ON IA No. V

The plaintiffs have filed IA No.V Under Order XIV rule 5 R/w section 151 of CPC, praying to amend the issue No.5 framed by this court. According to plaintiffs, they have filed this suit for declaration that trust deed dated:26/09/2014 is null and void. The defendants contest the suit by filing written statement. Thereafter this Hon'ble has been framed issues and issue No.5 treated as preliminary issue regarding jurisdiction, but while framing said issue has not clearly stated regarding what type of jurisdiction ie subject matter or pecuniary jurisdiction or territorial jurisdiction. Accordingly they sought for amend the issue No.5.

2. The defendants have not filed any objection to IA No.V despite adequate opportunities.

3. For disposal of IA No.V, the following points arise for consideration:

Points

1. Whether Preliminary Issue No.5 need to be amend or liable to be strike out?

2. What order ?.

4. Heard arguments.

5. My finding to the above points are as under.

Point No.1 : In the **Partly Affirmative**

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

REASONS

6. **Point No.1:-** Court can frame, recast or delete issues at any stage of the proceedings. Any material averments denied by other side gives rise to an issue.

7. It would be appropriate to extract order XIV rule 5 of CPC, which runs as follows:

Rule-5. Power of amend and strike out issues:

The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

8. Consideration of an issue and its disposal as preliminary issue has been made permissible only in limited cases. There is a mandate that not with standing, that a case may be disposed of on a preliminary issue, the court has to pronounce Judgment on all issues. The only exception to this is contained in sub Rule-(2) of order-14 rule 2 CPC, which relaxes the mandate to a limited extent by inferring discretion upon the court that if is of the opinion that the case or any part thereof may be disposed of “on an issue of law only”, it may try that issue first.

9. Only the following can be treated as preliminary issues.

Issues of law relating to

1. Jurisdiction
2. Bar to the suit created by any law for the time being in force

10. On perusal of pleadings of the parties it reveals that the plaintiffs have filed this suit against defendants for the relief of Declaration and Mandatory injunction. The defendants in their written statement have contended that, this court has no jurisdiction to entertain the suit. But the defendants have not specifically contended that how this court has no jurisdiction and what type of jurisdiction. Mere averment or a bald allegation is not sufficient to frame issue. Therefore, issue No.5 requires to be struck down. Hence exercising the power vested to this court U/O 14 Rule 5 of CPC, this court strike down Issue No.5. Accordingly Point No. 1 is answered in the “**Partly Affirmative**”

11. **Point No.2:** In the light of above discussion, this court proceed to pass the following:

ORDER

The IA No. V, filed by the plaintiffs under Order 14 Rule 5 Section 151 of CPC is partly allowed.

Consequently Issue No.5 framed on 07/02/2022 is hereby deleted/strike out.

Prl. Civil Judge & JMFC.,
Nanjanagudu.