

ORDER ON I.A.NO.X

This is the I.A.No.X filed by the applicant/plaintiff under Order 14, Rule 5 of C.P.C., seeking to recast the issues.

2. In I.A.No.X it is stated that for the reasons mentioned in the accompanying affidavit that, the plaintiff has filed the above suit against the defendants for the relief of declaration based on Will dated:05.07.2014. Further stated that, he has filed the above suit for the relief of ownership in respect of suit schedule amount, which is mentioned in Will dated:05.07.2014. Further stated that, by over sight this court has framed the issues in respect of probate. Further stated that, the issues framed by this Court would be re-casted and additional issues may be framed in view of the contention taken by him. The issue with respect to ownership of suit schedule amount based on Will dated:05.07.2014 is necessary for proper adjudication of the case. Accordingly, prayed to allow the I.A.No.X.

3. On the other hand, opponent/defendant has not filed objection to the above application.

4. Heard both counsels and perused the materials available on record.

5. It is found from the plaint that, the plaintiff has stated that, deceased S.Sundresh, is the son of Late S.N.S Iyer. Further stated that, one Manjula is the wife of said S.Sundresh and Vinay and Karthik are the children of said S.Sundresh. Further stated that, wife of the said S.Sundresh was dead at about 5 years and children of said S.Sundresh were left their father and gone somewhere. Further stated that, S.Sundresh is the friend of plaintiff. The plaintiff had been take care of the said S.Sundresh and the plaintiff has admitted the said S.Sundresh to the Bapuji Ananda Ashrama. Thereafter, as per the will and wish of said S.Sundresh, the plaintiff has admitted him to Jayamma Dharmaraj Little Sister of the Power, Mysuru. The said S.Sundresh died on 21.11.2016. Further stated that, during the life time of S.Sundresh he has taken the L.I.C Policy and he had made the plaintiff as nominee to the said L.I.C Policy. Further stated that, during the life time of said S.Sundresh he has executed registered Will dated:05.07.2014 in favour of plaintiff. Hence, the plaintiff has filed the suit for the relief of declaration of suit schedule amount on the basis of Will dated:05.07.2014.

6. As per Order 14, Rule 5 of C.P.C., the Court may at anytime before passing a Judgment amend the issues or framed additional issues on such terms for determining the matters in controversy between the parties.

7. As mentioned above the plaintiff has filed the suit for the relief of declaration of suit schedule amount on the basis of Will dated:05.07.2014. But by oversight this court has framed the issues in respect of probate. Hence, it is necessary to recast the issues. If this Court recast the issue with respect to claim of the plaintiff in respect suit schedule amount there is no hardship caused to the defendants. It is the burden on the plaintiff to prove the said issue. Moreover, the defendant also having right to depose evidence and lead documentary evidence on the said issue. Hence, if the application is allowed no hardship or legal injury caused to the defendant. Hence, the grounds mentioned in I.A. are satisfied. Therefore, it is necessary to allow instant I.A. in the interest of justice and equity. Hence, I proceed to pass the following:-

ORDER

I.A.No.X filed under Order 14, Rule 5 of C.P.C. by the applicant/plaintiff is hereby **allowed.**

For recasting of issues.

Call on: 26.02.2025.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.****