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**ORDER**

IA-XVIII is filed by the counsel for the defendants under Order XIV Rule 1 and 5 R/w Section 151 of C.P.C. to recast issues as per the proposed issues mentioned in IA-XVIII.

2. The same is brought to the notice of the counsel for the plaintiffs who has filed objections to the said application.

3. Heard counsel for the defendant No.2(a) and defendant No.4 and counsel for the plaintiffs.

4. The following points arise for my consideration:

**:POINTS:**

1. Whether sufficient grounds are made out to recast issues as

per the proposed issues mentioning in IA-XVIII?

2. What Order ?

5. My findings on the above points are as follows:

Point No.1: In the **Negative**.

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

### **REASONS**

6. **Point No.1**:- It is submitted by the defendants that the plaintiffs have filed the suit for partition without claiming possession and admitted in the evidence that defendant No.2 and 3 and defendant No.5 to 11 are formal parties. Defendant No.3 to 5 are in possession of the property to the knowledge of defendant No.1 and husband of plaintiff No.1 since 1979 and hence without seeking possession within 12 years the suit is time barred and not maintainable. It is submitted that if the pleading of the additional written statement is taken into consideration there is necessity to recast issue issue No.2 and to frame additional issues and prayed to allow the application.

7. The plaintiff on the other hand has stated that there is no original pleading of defendant No.2 and 3 either in the suit or earlier suit as to claim of adverse possession. Hence as far as defendant No.2 and 3 is concerned there is no pleadings with respect to adverse possession and hence defendant No.4 cannot insist to frame issues of adverse possession on behalf of LR of defendant No.2 and defendant No.2(a) and 3. In this circumstances it is submitted that the claim of adverse possession is set for defendant No.2 and 3 by defendant No.2(a) only in the additional written statement. Suffice to say that additional issue No.2 dated 23-11-2018 would be altered by adding defendant No.2(a) along with defendant No.1 to prove adverse possession and hence prayed to frame additional issue in respect of defendant No.3. It is submitted that additional issue No.2 and 3 is raised is one and the same and it is sufficient to raise only additional issues on Court fee. Hence on these grounds prayed to dismiss the additional issue as stated in the application.

8. The present IA-XVIII is filed by only defendant No.2(a) and defendant No.4 and hence the burden to proof can be sought for only in respect defendant No.2(a) and defendant No.4 and not in respect to other defendants. On perusal of the issue framed by this Court, there are already issues framed on 23-11-2018, casting burden on defendant No.1 to prove the relief of adverse possession. Hence there is no necessity of framing another issue and it is sufficient to only include defendant No.2(a) along with defendant No.1 in already framed issue No.2 dated 23-11-2018.

9. As far as the manner in which defendant No.1 and 2(a) claim the relief of adverse possession is already appearing in the additional written statement and is a same matter of discussion and need not be reiterated while recasting the issue No.2 already framed by this Court.

10. In addition as far as the Court fee is concerned, it is the defendant No.2(a) and 4 who are

disputing the payment of Court fee as improper and insufficient and hence the burden is on the defendant No.2(a) and defendant No.4 to prove that the Court fee paid is improper and insufficient. Hence additional issue can be framed on the question of payment of Court fee, casting burden on defendant No.2(a) and defendant No.4 to prove that the Court fee paid by the plaintiff is not proper and sufficient. Hence for the said reasons I answer point No.1 **partly in the affirmative.**

11. **Point No.2:** In view of my findings on point No.1 partly in the affirmative, I proceed to pass the following:

**ORDER**

IA-XVIII is filed by the counsel for the defendant No.2(a) and defendant No.4 under Order XIV Rule 1 and 5 R/W Section 151 of C.P.C. is hereby partly allowed.

The additional issue No.2 dated 23-11-2018 is recasted by

O.S. No.15/2011

adding defendant No.2(a) along with defendant No.1 to prove adverse possession.

Additional issue is framed on Court fee as follows:

1) Whether the defendant No.2(a) and 4 prove that the Court fee paid by the plaintiff is improper and insufficient in view of the provision of Karnataka Court Fees and Suit Valuation Act?

Call on 07-11-2024

**Pri. Senior Civil Judge,  
& CJM Karwar.**