

ORDERS ON APPLICATION FILED UNDER ORDER XIV Rule 5 R/W
SEC.151 OF C.P.C.

I	Provision under which the application is filed	U/O. XIV Rule 5 R/w Sec.151 and of C.P.C
II	Relief sought for	To frame additional Issue
III	The date on which the application filed.	31.08.2024
IV	Number of application.	I.A.No.VIII
V	The date on which the objection filed by opponent.	25-10-2024
VI	The date of which the order passed on the application.	18.01.2025

The defendant has filed this application seeking to frame additional issue as bellow and also prays to treat the said issue as preliminary issue

1. Whether the plaintiff proves that, suit is maintainable during the lifetime of father-defendant No.1?

2. In the affidavit accompanying to the application, it is stated that, the applicant is the defendant No.1 in the present case and defendant No.2 is his wife. The plaintiff, deceased defendant No.3, defendant No.4 and 5 are his children. In his written statement at para No.6, he has stated that, during his lifetime the suit is not maintainable, since the suit property is his self property. Hence, he prays to frame additional issue as stated above and also prays to treat the said issue as preliminary issues.

3. Per contra, the plaintiff counsel has filed objection to this application and contended that, the application is false, and unsustainable under law. Further the suit properties are the tenanted land of the grand father of the plaintiff by name Manju S/o Fakki. After his death, the said

suit properties are mutated in the name of defendant No.1 by way of varisa. The property measuring 00-05-00 out of 00-22-00 in survey No. 461/2001 has been sold to be defendant No.6 on 13-02-2024. As such in the said survey number another 00-05-00 of land has been sold to defendant No.7. The defendant No.5 in order to deprive the plaintiff's right over the suit property, he is selling the suit properties to others. The defendant No.1 also trying to alienate the suit properties. Hence, this suit is filed. This application is filed, in order to drag the suit. Hence prays to reject the application with costs.

4. Heard both side arguments, perused the documents available on record.

5. In view of above said facts and circumstances, the points that would arise for my consideration is as below:-

1. Whether application filed by the defendant No.1 under Order XIV Rule 5 R/w 151 of C.P.C is deserves to be allowed?

2. What order?

6. My answers to the above points is as below:-

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

Point No.2: In view of above
for the following:

REASONS

7. **Point No.1:** This suit filed by the plaintiff against the defendants for partition. At the stage of compliance under section 89 of C.P.C., the defendant No.1 has come up with this application for framing of additional issue as sought in the application.

8. On perusal of the pleadings, it is clear that the fact in issue is that, whether the schedule property is available for partition and the plaintiff has share over the schedule property. Accordingly this court has framed issues on

23-07-2024. Those issues are sufficient to decide the dispute between the parties in the present suit. The question regarding the nature of property can be decided in the issue No.1 which is already framed in the present suit. The issues already framed are sufficient to adjudicate the dispute between the parties. Therefore by considering the facts and circumstances of the case, the point No.1 is answered in the **Negative**.

9. Point No.2: For the forgoing reasons, I proceed to pass the following:-

ORDER

The I.A.No.VIII i.e., Application U/O. XIV
Rule 5 R/w Sec.151 of C.P.C. is hereby rejected.

Sd/-

Addl. Civil Judge and JMFC.,
Bhatkal.