

ORDER ON I.A.No.XII

I.A.No.XII is filed by the defendant under order XVI rule 5 of C.P.C. It is sought to frame an additional issue casting burden on the plaintiff to prove as to whether the description of the schedule “A” and “B” properties are correct.

2. The counsel for the plaintiff has opposed the application and had filed objection.

3. Heard the arguments.

4. The points that would arise for my consideration is:

*Whether the additional issue as sought
is to be framed?*

5. My finding on the above point is in negative for the following:

REASONS

6. The suit is for relief of partition and separate possession. Suit schedule “A” consists of 5 items of agricultural landed properties. Schedule “B” consists of 13 items of house property. It is contended by the Learned Counsel for the defendant that the plaintiff has not furnished the boundaries of plaint "A" schedule property so as to identify the same and the description of the plaint "A" and “B” schedule properties given in the plaint is not correct. Further according to her subsequently a contention has been taken in that regard in the counter to that. It is contended by the Learned Counsel for plaintiff that the defendants have not denied the existence of plaint “A” and “B” schedule properties

and the suit properties could be identified by Sy.No. Defendant No.2 to 4 have adopted the written statement of defendant No.1. In para 19 of the written statement a contention is taken that the description of “A” and “B” schedule property is not correct and the plaintiff has not furnished the boundaries of “A” and “B” schedule property. Therefore the suit is bad for non-compliance under order VII rule 3 of C.P.C. I feel since the identity and the location of the property is not in dispute, in a suit for partition the non mention of the description of the boundaries is not fatal to the case. Further there is no dispute in between the parties with regard to the boundaries of the suit properties. Hence, I feel the issue as sought does not arise at this stage. Accordingly, there is no merit in the application. Therefore, I answer the above point in the negative.

7. In view of the discussion made above, I proceed to pass the following:

ORDER

I.A.No.XII is hereby dismissed. No
order as to cost.

For further cross of P.W.1 by.

(Shivaram.K)
Prl. Sr. Civil Judge, Udupi.