

**ORDERS ON MEMO**

The learned counsel for defendant No.1 filed I.A. under Sec.151 of C.P.C. and memo that he undertake to assist the court in taking up this matter and day to day basis.

2. The learned counsel for plaintiff submits that he has no objection to take up the matter on day to day basis.

3. Heard.

4. The plaintiff filed the suit for partition and for separate possession. The present suit was filed in the year 2020. The evidence is not yet commenced. Though the court has framed the issues on 13.10.2023. After framing of issues, the parties have filed interim applications. It is seen from the records that the defendant No.3 filed written statement on 18.06.2025 i.e., after lapse of 5 years. So one can imagine how the parties misused the provisions of C.P.C. under umbrella of natural justice and under the shelter of no

knowledge about the law. Already the parties are filed more than 21 I.A.'s which includes number of applications under Order VI Rule 17 of C.P.C. The Government has not provided an opportunity to the failed candidates to write exams thrice or 4<sup>th</sup> time in the same year, but here the parties after filing of the pleadings, filed application under Order VI Rule 17 to cause amendment to their pleadings. It is seen that if the parties have not filed any interim application, the matter can be conveniently posted on day to day basis for early disposal. However, in the present case, the parties are filing applications one after another particularly under Order VI Rule 17 of C.P.C. seeking amendment of pleadings. Each such applications requires the court to go through the pleadings which runs into several pages, before passing appropriate orders. Concentrating on such voluminous pleading on a day to day basis would effect the disposal of other cases.

5. Further if any application under Order I Rule 10 of C.P.C. is filed, issuance and service of notice to proposed parties by the Process Servers will also cause delay making it impracticable to proceed with the matter on a day to day basis.

6. Only if the parties undertake not to file any interlocutory applications, the court may consider posting the matter on day to day basis. In the absence of such undertakings, there is no ground to allow the present application. Accordingly, the memo filed by the defendant No.1 is hereby rejected. However, the parties are liberty to file affidavit undertaking not to file any application to post the matter on day to basis and also undertake to cross-examine the parties on day to basis without assigning cock and bull story. Accordingly, the memo is rejected. However the court is undertake to post the matter by granting short time to give justice to the parties. By these observations, the memo filed by the defendant No.1 is rejected.

Prl. Sr. Civil Judge & C.J.M.  
Udupi.

### **ORDERS ON APPLICATION**

The defendant No.1 filed application under Order 14 Rule 2(2) and Rule 5 r/w Sec.151 of C.P.C. prays the court to recast the Issue No.6

framed by this court and to frame the following Additional Issues on the ground that the burden of proof lies with the plaintiff and the Additional issues sought to be framed arise out of the contentions specifically taken by the defendant No.1. The said issues are very relevant and necessary for due adjudication of the matter in controversy involved in the suit. Among other grounds, pray for allow the application.

2. The plaintiff counsel filed objections. In the objections it is stated that the issues sought to be framed are irrelevant to adjudication of the disputes involved in the suit. The issues framed before this court are sufficient to answer all the disputes involved in the suit. Among other grounds, pray for dismissal of the application.

3. Heard arguments. Perused the entire materials available on record.

4. The plaintiff filed the suit for partition and for separate possession. My Predecessor in Office framed issues based on the pleadings. The defendant No.1 contented in his written statement that the suit is not maintainable without seeking

declaration/ cancellation of the release deed dated 30.03.2007, 07.03.2017, 08.03.2017. The burden is on the defendant No.1 to prove the said issue and not on the plaintiff. The plaintiff filed the suit by believing that he is need not required to sought for cancellation of the release deed and settlement deed. When the defendant No.1 contented that the plaintiff is required to sought for cancellation then burden is on him to prove the said issue and not on the plaintiff. Hence, the recast of Issue No.6 sought by the defendant No.1 is hereby rejected. As far as other Additional Issues are concerned, the burden to prove the Additional Issue No.1 is on the 1<sup>st</sup> and 6<sup>th</sup> defendant and not on the plaintiff. Accordingly, this court in order to resolve the disputes in the suit, framed the Additional Issues as follows:

1. *Whether the defendant No.1 proves that the suit is not maintainable without seeking declaratory/ cancellation decree to set aside the registered settlement deed dated 28.11.2016 executed by 1<sup>st</sup> defendant in favour of 6<sup>th</sup> defendant?*

2. *Whether the suit is barred by law of limitation?*

3. *Whether the suit has been properly valued for the purpose of court fee and jurisdiction?*

4. *Whether the suit is barred under Provisions of benami transactions (Prohibition Act of 1988 and Amendment Act of 2016).*

5. *Whether the description of the plaint properties given in plaint 'A' and 'B' schedule of the plaint is correct and proper?*

Prl. Sr. Civil Judge & C.J.M.  
Udupi.

### **ORDERS ON APPLICATION**

The defendant No.5 filed application under Sec.148 r/w 151 of C.P.C. seeking permission of the court to condone the delay in filing the written statement.

The plaintiff has not filed objections.

The plaintiff filed the suit for partition and for separate possession. The defendant No.5 was

impleaded by the plaintiff and accordingly, notice was issued to her. Later, she appeared before the court through her counsel. When the matter is fixed for filing of the written statement, she has not filed the written statement. Now she come up with the written statement along with application.

The reasons assigned by the defendant No.5 appears to be satisfactory and bonafide. The delay is properly explained. No serious prejudice will be caused to the plaintiff if the delay is condoned. Whereas if the delay is not condoned, the defendant will be deprived of an opportunity to contest the suit on merits. The evidence is not yet commenced by the plaintiff, though the instant suit was filed in the year 2020. The plaintiff implead the defendant No.5 in the year 2024. Hence, no injustice is caused to the plaintiff if the application is allowed. Apart from this, as stated above the suit is one for partition and for separate possession. All the parties to be treated as plaintiffs. In order to pass an effective preliminary decree, it is just and necessary to hear the defendant No.5 regarding the defence taken by her. If her defence is not heard, then she unable to put forth her defence. Hence, justice demands this court to allow the application by providing fair opportunity to both

parties in the suit. Accordingly, I proceed to pass the following:

**ORDER**

The application filed by the defendant No.5 Vijayalaxmi Shetty under Sec.148 r/w 151 of C.P.C. is hereby allowed.

In the result, the written statement filed by defendant No.5 is taken on record.

Prl. Sr. Civil Judge & C.J.M.  
Udupi.

Additional Issues are not arises. The issues and Additional Issues framed by this court at this stage is sufficient to decide the matter on merits. Hence, the matter is posted for plaintiff evidence.

The Hon'ble High Court of Karnataka has fixed 6 months time to dispose the matter. Hence, both parties are requested to co-operated the court for early disposal.

For plaintiff evidence by 24.11.2025.

Prl. Sr. Civil Judge & C.J.M.  
Udupi.