

Orders on IA No. 4

The defendant No. 4 has filed this application under Order XIV Rule 5(1) of CPC for framing additional issues.

2. It is stated in the accompanying affidavit that the plaintiffs have filed the above suit for the partition of the suit 'A' schedule properties. The defendant No. 4 has filed his written statement. He has taken a specific contention with regard to the Serial No. 1 of the suit 'A' schedule property since the same is settled to him by his mother Juvanna Fernandes vide the registered settlement deed dated 13-10-2000 vide Document No. 913/200-01/Book No. 1 of SRO Kundapura. He has got the valid absolute right title and interest over the same and the same is not at all partible with any of the parties to the suit and it belongs to him only. There is a need of framing of an issue with regard to the said fact. Along with the present issues already framed in the above suit by the Court while framing of issues the issue with regard to the same was left out and no issue was framed regarding the same by the Court. If the said issue was not framed it would lead to miscarriage of justice and no proper adjudication of matter under dispute in the said suit is adjudicated. Hence prays to allow the application.

3. The plaintiff has filed objection to the above application contending that defendant No. 4 has falsely contended that mother has executed a settlement deed dated 13-10-2000 bearing Doc. No. 913/2000-01 of Kundapura SRO relied on by the applicant is not a genuine document and the same is a forged and created document. The mother of the plaintiff has not executed such a document. The 4th defendant is not the absolute owner of the property covered

under the said created document. The 4th defendant is contending that he has got absolute right over the said property. The 4th defendant is falsely contending that the said property is not partible property. The additional issue sought to be framed is not required for the disposal of the suit. Nothing is left out as alleged by the 4th defendant. Absolutely there are no grounds to allow the application. If the IA is rejected nobody will be put to any hardship. There are no grounds to allow the IA. Hence prays to dismiss the application.

4. Heard both sides and perused the materials on record.

5. The points that would arise for my consideration are as under:

//POINTS//

**1) Whether the applicant/defendant
No. 4 has made out the grounds to
allow the applications ?**

6. My answer to the above point is in the **Affirmative** for the following:

// REASONS //

7. The plaintiff has filed this suit against the defendants for the relief of partition. After service of summons the defendants No. 2 and 3 have not appeared before the Court. Hence they were placed *exparte*. Defendants No. 1 and 4 have appeared before the Court through their counsel, but they have not contested the case. The suit came to be decreed on 17-12-2021. The defendant No. 4 challenged the judgment and decree in R.A. No. 9/2022 which came

to be allowed on 13-06-2023 and the judgment and decree passed by this Court was set aside. The matter has been remanded to take up the matter and proceed in the same original number by providing an opportunity to the defendant No. 4 to file written statement and for disposal of the suit afresh. Thereafter, the defendant No. 4 filed written statement. This Court framed issues on 10-10-2023. The defendant No. 4 has taken the specific contention that his mother settled the item No. 1 of suit 'A' schedule property in his favour by executing registered settlement deed dated 13-10-2000. While framing the issue this Court has not framed issue in respect of specific contention taken by the defendant No. 4. Therefore, the additional issues sought to be framed is required for the effective disposal of the suit. Therefore, the application needs to be allowed in the interest of justice. Accordingly, I proceed to pass the following:

ORDER

The IA No. 4 filed by the defendant No. 4 under Order 14 Rule 5(1) of CPC is hereby allowed.

The Additional issue framed as whether the defendant No. 4 proves that he is the absolute owner of item No. 1 of suit 'A' schedule property by virtue of registered settlement deed, dated 13-10-2000 executed by his mother.

For cross of PW1.

Call on 21-06-2025.

II Addl. Civil Judge and J.M.F.C.,
Kundapura