

ORDERS ON I.A.NO.III

The Counsel for plaintiffs filed the present application under Order XIV Rule 1 and 5 R/w Section 151 of C.P.C. seeking prayer to recast issue No.3 and frame the additional issues as proposed in the application accompanying with Affidavit duly sworn by the applicant.

It is averred by the 2nd plaintiff that his father bequeathed suit 'A' schedule property as per registered Will dated 04.08.2018 as his last Will to the plaintiffs and defendant No.1 and 2 equally. This fact is disputed by defendant No.1 and 2. Hence, issue with this regard is absolutely necessary to answer whether it is binding upon the plaintiffs and defendant No.1 and 2. It is further averred by the plaintiff No.2 that the defendant No.1 executed a Settlement Deed dated 08.06.2020 about the suit schedule 'A' property in favour of 3rd defendant registered at Mangaluru and is disputed by the plaintiffs as it is not binding upon their rights and share. Hence, an issue with this regard is necessary to be framed. Hence, prays to allow the application in the interest of justice.

On the other hand, the counsel for defendants filed objections denying the contents of Affidavit averments as not maintainable both at law and points of facts. The defendant denied alleged Will dated 04.08.2018. Further denies the execution of Settlement

deed dated 08.06.2020 pending disposal of this suit and executed by defendant No.1 in favour of 3rd defendant. The said defendant claims that he had absolute right over the property and hence, he has rightly executed the Settlement Deed in favour of 2nd defendant on 08.06.2020 and the same is binding on the plaintiffs. It is further denied that plaintiffs have 1/5th share in the plaint schedule property. Hence, framing of additional issues is not necessary and hence, prays to reject the application.

Heard both sides and perused the materials placed before me.

The plaintiffs have filed the present suit seeking their 5 equal shares and deliver 3 such shares to the plaintiffs by way of partition in suit schedule 'A' property. Admittedly, when the case was reached for further chief-examination of PW.1 the said application is filed. I have perused the issues framed by my predecessor. Upon pleadings it is found just and necessary to frame the additional issues and to recast issue No.3. Accordingly, I proceed to pass the following:

-ORDER-

The I.A.No.III filed by the plaintiffs U/o XIV Rule 1 and 5 R/w Section 151 of CPC is hereby allowed.

The issue No.3 is hereby recasted and proposed additional issues as sought in the present I.A. is framed.

O.S.361/19

II Addl. Sr. C.J. & CJM
Mangaluru.