

ORDERS ON I.A.NO.IX

At the stage of hearing, applicants/defendants have filed IA No.IX Under Order 22 Rule 2 r/w. Section 151 of CPC with a prayer to frame proposed additional issues for the just disposal of the suit in accordance with law.

2. The said application is accompanied with an affidavit sworn by defendant No.4, wherein it is stated that they have not executed any sale agreement in favour of the plaintiff in respect of their ownership of suit agricultural lands and not received the advance amounts as mentioned in the sale agreement dated 18.06.2007. Further, the Court fee paid by the plaintiff is not proper and the agreement of sale dated 18.06.2007 is false, bogus and created one. Further taken contention that suit is barred by limitation. Further it is contended that if the said additional issues not framed, then the very purpose of the genuine defense raised by them would be no use, because in the suit for Specific performance of contract, the said additional issues are necessary to be framed for the just disposal of the suit. If the present application is allowed, no loss or prejudice will be caused to the other side. On the other hand, they will be put to immense loss and injury, if the present application is not allowed. Hence, prayed to allow the application.

3. On the other hand, the plaintiff has opposed the said application by filing common objections to said I.A by denying the contents of the applications as false and contended that his Court has already framed issues and the proposed additional issue No.2 is already covered in issue No.2, hence additional issue No.2 cannot be framed and 3rd proposed additional issue is not at all necessary in the present facts of the case. The defendant has not raised any such contention till date. The main intention of the defendants is to drag on the matter and to delay the recording of evidence. Hence, prayed to reject the application.

4. Heard, perused the records.

5. On the basis of the above facts, the following points that arise for my consideration:

1. Whether the applicants/defendants have made out sufficient grounds to allow the application?
2. What order?

6. My answer to the above points is as under:

Point No.1: In the Affirmative

Point No.2: As per final order for the following:

REASONS

7. **Point No.1:** The defendants have filed the present application seeking to frame additional issue as detailed in the application contending

that in the written statement they contend that the Court fee paid by the plaintiff is not proper and the agreement of sale dated 18.06.2007 is false, bogus and created one. Further taken contention that suit is barred by limitation.

8. The plaintiff in his objection contending that this Court has already framed issues and the proposed additional Issue No.2 is already covered in Issue No.2, hence additional issue No.2 cannot be framed and 3rd proposed additional issue is not at all necessary in the present facts of the case. The defendant has not raised any such contention till date.

9. It is pertinent to note that the present suit is filed by the plaintiff against the defendants seeking Specific performance of agreement dated 18.06.2007. On perusal of the written statement, it appears that the defendants have taken contention the plaintiff has not paid the Court fee and suit is barred by limitation and the sale agreement is created and forged. According to the plaintiff, the issue No.2 pertains to execution of the agreement by the defendants on 18.06.2007 by receiving the sale consideration. Therefore, there is no need to frame the additional issue as proposed additional issue No.2 is already covered in issue No.2. It is pertinent to note that, on perusal of the pleading of plaintiff, wherein the plaintiff claims that he has paid the total consideration of Rs.4,58,646 and balance to be paid is Rs.29,440/-. The plaintiff contend that he has paid the amount on various dates. Further produced the sale agreement. On

perusal of the sale agreement, it appears that it contains an endorsement with respect to receipt of money other than the date of the alleged agreement. The defendants contend that the said agreement is created one. In the issue No.2, there is no averments with respect to purported receipt of money subsequent to the agreement. On perusal of issue No.2, it contains only with respect to receipt of Rs.1,00,000/-. Hence, the contention of the plaintiff that additional issue No.2 is covered in issue No.2 cannot be accepted. Further with respect to limitation is concerned, the defendant taken contention that suit is barred by limitation. Hence, said issue has to be framed. The defendants also taken contention the Court fee paid is not proper. Hence, I am of the opinion that the defendants have made out grounds to allow the application. Hence, I answer the point No.1 in the Affirmative.

9. **Point No.2:** In view of above discussion, I proceed to pass the following;

ORDER

IA No. IX U/O. 14 Rule 5 r/w. Sec 151 of CPC is hereby allowed.

No order as to cost.

The additional issues are framed as detailed in the application.

For Plaintiff evidence, if any on addl issue by 27-7-2023.

IV Addl. Civil Judge & JMFC.,
Belagavi.