

05-06-2026:

ORDERS ON IA No.4

The defendant No.2 has filed the present application under Order XIV Rule 5 R/w Section 151 of CPC seeking framing of the following additional issue:

“Whether the suit is barred by limitation?”

2. In the affidavit filed in support of the application, it is stated that the plaintiffs have filed this suit for declaration, partition and separate possession. The issues were framed on 05-08-2024. According to the defendant No.2, the suit properties were purchased by his father under a registered sale deed dated 02-07-1994 and the present suit has been instituted after laps of about 28 years from the date of said purchase. It is contended that the plea regarding limitation has been specifically raised in paragraph No.2 of the written statement filed by defendant No.2. However, no issue has been framed on the aspect of limitation. It is contended that the proposed issue is necessary for proper adjudication of the suit. Hence, he sought framing of additional issue regarding limitation.

3. The plaintiffs have filed objections contending that the application is false, belated and not maintainable. It is contended that the suit properties are ancestral joint family properties and that the father of defendant No.2 had obtained the sale deed without the consent and knowledge of the plaintiffs. It is further contended that the plaintiffs were not aware of the said sale transaction and came to know about the RTC standing in the name of defendant No.2 only after obtaining RTC extracts subsequent to the death of the husband of plaintiff No.1 and father of plaintiff No.2. It is also contended that there has been no partition by metes and bounds and the plaintiffs continue to be in possession of the suit properties. According to the plaintiffs, the delay, if any, has already been explained in the plaint. It is further contended that the evidence of plaintiffs has already been completed and the matter is posted for arguments and the present application is filed only with an intention to protect the proceedings. Hence, they have prayed for dismissal of the application with costs.

4. Heard the learned counsel for both sides and perused material available on record.

5. The following points arise for consideration:

POINTS

1) Whether the defendant No.2 has made out grounds for framing an additional issue regarding limitation ?

2) What order?

6. My findings to the above points are as under:

Point No.1: In the Affirmative

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

REASONS

7. **Point No.1:-** A careful perusal of the plaint, written statement and the records of the case discloses that the defendant No.2 has specifically contended that the suit properties were purchased by his father under different registered sale deeds dated 02-07-1994. The plea that the suit is barred by limitation has been specifically raised in the written statement. On the other hand, the plaintiffs contend that they were unaware of the sale transaction that the suit properties are ancestral joint family properties, that there has been no partition by metes and bounds and that they came to know about the entries in the name of defendant No.2 only subsequently.

Thus, the rival pleadings clearly discloses that a dispute regarding limitation.

8 Order XIV Rule 5 of CPC empowers the Court at any stage of the proceedings before the posing a decree to amend the issues or frame additional issues as may be necessary for determining the matter in controversy between the parties.

9. Whether the suit is within limitation or barred by limitation is a matter which goes to the root of the maintainability of the suit. Though, limitation may involve consideration of factual aspects, an issues of limitation is necessary whenever a specific plea has been raised and evidence is available on record regarding such plea. Merely because the application has been filed at a later stage of the proceedings cannot be a ground to reject the same when the proposed issue arises from the pleadings of the parties and is essential for effective adjudication of the dispute. Further, framing of an additional issue would not caused prejudices to either party. On the contrary, it would enable the Court to render a complete and effective adjudication on all matters in controversy. Therefore, this Court is of the considered opinion that the proposed issue

is necessary for determining the real controversy between the parties and deserves to be framed. Accordingly, point No.1 is answered in the Affirmative.

10. **Point No.2:-** In view of the above findings and discussion made on point No.1, this Court deems it fit to pass the following:

ORDER

The I.A.No.4 filed by the defendant No.2 under Order XIV Rule 5 R/w. Section 151 of CPC is hereby allowed.

In the result the following additional issue is framed.

Additional Issue No.1.

“Whether the defendant No.2 proves that the suit is barred by limitation?”

The parties are at liberty to adduce their evidence on the said additional issue.

No order as to costs.

Call on for evidence of plaintiffs, if
any, on additional issue No.1 by 09-06-
2026.

(Dictated to the stenographer, transcribed by him and corrected, revised
then signed by me and pronounced in the open Court on this the 5th Day of June,
2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.