

**IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.**

**: PRESENT:**

**MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M**  
CIVIL JUDGE & JMFC., SHIGGAON.

**ORIGINAL SUIT No.144/2016**

**DATED ON THIS THE 5<sup>th</sup> DAY OF NOVEMBER-2022**

**Plaintiffs :** Gurunath Nagesh Deshpande  
Aged about 60 years, Occ: Agriculture  
R/o Desai Galli, Shiggavi,  
Dist: Haveri

***[By Sri.K.S.J., Advocate]***

**V/s**

**Defendants:** 1. Mohan Laxmipathirao Deshpande,  
Aged about 66 years, Occ: Agriculture  
R/o Desai Galli, Shiggavi,  
Dist: Haveri

2. Ashok Vinayak Raikar  
Aged about 62 years, Occ: Business  
R/o Near Old Bus stand, Tq: Shiggavi,  
Dist: Haveri

3. Shantakumar s/o Atmaram Raikar  
Aged about 42 years, Occ: Doctor,  
R/o Tabakadahonihalli, Near Chavati,  
Tq: Kalagatagi village,

Dist: Haveri

***[D-1 By Sri.F.S.K, Advocate & D-2 By Sri.  
K.S.P, Advocate and D-3 By Sri G.S.A  
Advocate]***

**PARTIES TO I.A.No.III**

**Applicants** : 1.Mohan Laxmipathirao Deshpande,  
(Defendants) Aged about 66 years, Occ: Agriculture  
R/o Desai Galli, Shiggavi,  
Dist: Haveri

**V/s**

**Opponents** : Gurunath Nagesh Deshpande  
(Plaintiff) Aged about 58 years, Occ: Agriculture  
R/o Desai Galli, Shiggavi,  
Dist: Haveri

**ORDER ON I. A. No.III**

Defendant No.1 has filed IA.III under Order 14 Rule 5 of CPC praying this Court to frame additional issues as proposed and hear all the said issues as preliminary issues.

**2.** Defendant No.1 has filed an affidavit accompanying the said IA averring that, the plaintiff has filed the suit for declaration and permanent injunction and so far as regarding the declaration is concerned, the registered sale deed dated 23.11.1999 executed by the defendant no.1 in favour of the

defendant no.2 and 3 is not binding on the plaintiff and the defendant no.1 in the written statement has taken up the contention that, the suit of the plaintiff is not maintainable in view of the Section 58 of Indian Limitation Act. The defendant no.1 has taken up the contention that, the suit of the plaintiff is hit by the doctrine of estoppel under Section 115 of Evidence Act and that, the Court is not having jurisdiction and suit is not maintainable and it is necessary to frame additional issues on the said aspect and to try the same as preliminary issues and hence pray the Court to allow the said application .

**3.** Plaintiff counsel has filed objection to the said IA interalia denying the defendant's contentions and states that, under Civil Rules of Practice Rule No.23 only one application for two reliefs is not maintainable and in this application 2 reliefs are sought and the said issues cannot be tried as preliminary issues as, after the evidence the point of limitation can be decided and hence, pray the Court to reject the said IA.

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

**5.** On perusal the following points arise for my consideration.

**POINTS**

1. Whether the defendant no.1 has made out the ground to allow IA.No.III?
2. What order ?

**6.** On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are here under:-

*Points No.1 : In Partly Affirmative*

*Points No.2 : As per final order*

*for the following:*

**REASONS**

**7. Points No.1:-** Plaintiff has filed this suit for declaration and injunction and defendant no.1 has filed the present IA to frame additional issues and try them as preliminary issues. On perusal of the written statement of the defendant no.1 it appears that, the defendant no.1 at Para No.13, 14 and 15 have taken up the contention that, the suit of the plaintiff is hit by Section 115 of Indian Evidence Act, that the suit is liable to be dismissed under Section 58 of Limitation Act and that, the Court has no jurisdiction to entertain this suit as tribunal has granted occupancy right under Karnataka Land Revenue Act in favour of the defendant no.1 in the year 1976.

Hence it can be seen that, the defendant no.1 has taken up the said contention in the written statement and Order 14 of CPC makes it clear that, the issues ought to be based on the pleadings and according to said order, it is necessary to frame additional issues on the contention raised by the defendant no.1 in the written statement on the point of estoppel, limitation and jurisdiction of the Court. However, the Points of Estoppel and Limitation are not pure questions of law and they are mixed questions of law and facts and also as per the case citation produced by the plaintiff i.e ***M/s Mongia Realty and Buildwell Private Limited v/s Manik Sethi 2022 live law (SC) 148*** it is said that ,once facts are disputed about the limitation , the determination of question of limitation also cannot be made under Order 14 Rule 2(2) as preliminary issues or any such issue which requires examination of disputed facts. Hence in the above case the defendant no 1 has contended about the Point of Estoppel and Limitation and it is for him to prove the said facts as the same cannot be readily inferred or seen to be admitted from the averments of the plaint hence, the said additional issues are considered along with the main issues and cannot be tried as preliminary issues but, regarding the point of jurisdiction as Order 14 Rule 2(2)(a) contemplates trying of said issue as preliminary issue ,the same is considered to be

the preliminary issue. Therefore considering the discussion made above, Point No.1 is answered in Partly Affirmative.

**8. Point No.2** :- In view of the discussion made above, I proceed to pass the following:

**ORDER**

*IA.No.III filed by the Defendant No.1 under Order 14 Rule 5 of CPC., is hereby allowed partly with cost of Rs.200/-.*

**(NASRAT MUKHTAR AHMED KHAN)  
CIVIL JUDGE & JMFC.,  
SHIGGAON.**