

ORDERS

1. Vide this order I shall decide an applications filed U/O 14 Rule 5 R/W 151 of CPC praying to frame additional issues.

2. It is averred in the applications that, defendant no.3 has raised the contention in the amended written statement regarding that the suit is barred by limitation, the court fee paid by the plaintiffs for the relief of the declaration of ownership and sale deed dated 07.01.2013 as null and void is insufficient and the suit is bad for non joinder of necessary parties. But, this court has not framed issues with respect to the above said material facts. It is further averred that the issues has to be framed on the material prepositions as aforesaid for just decision of the case. Therefore, defendant no. 3 prayed to allow the application.

3. The plaintiff has filed reply.

4. Heard on both sides.

5. The point that would arise for my considerations is that:

1. Whether the defendant no.3 has made out sufficient grounds to frame Additional Issues?

2. What Order?

6. My finding to the above point or as follows:

Point No.1 :- In the Affirmative,

Point No.2 :- As per order for the following;

REASONS

Point No.1:

7. Learned counsel for the defendants argued that, this court has not considered their additional pleadings and not framed the issue which has

been sought for point of limitation, court fee paid on plaint is in sufficient and suit is based for non joinder of necessary parties. Thus additional issues should be framed for just decision of the case and will go to the root of the case of plaintiffs.

8. Before proceeding further it is pertinent to note that on the perusal of the order sheet it reflects that the issues in this case were framed by this court in the year 2019 and when the case was posted for cross examination of plaintiff no.2, the present applications are filed for framing of additional issues.

9. Order XIV of code of Civil Procedure, 1908 deals with settlement of issues, Rule thereof reads as under "Framing of issues-

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) Issues of fact. (b) Issues of law.

(5) At the first hearing of the suit the court shall, after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders ascertain upon what material propositions of fact or of law the parties are at variance, and

shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the court to frame and record issues where the defendant at the first hearing of the makes no defence."

10. Rule 3 says that the court may frame the issues from the following materials (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties; (b) allegations made in the pleadings or in answers to interrogatories in the suit; (c) the contents of documents produced by either party. Rule 5 is about power of the court to amend, and strike out issues, which is relevant. The said Rule was deleted by the Amendment Act,1999, but came to be restored verbatim with effect from 01st July, 2002 as per CPC (Amendment) Act, 2002 (22 of 2002), "5. Power to amend, and strike out, issues. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

11. It is clear from the aforesaid provisions that the issues are framed on the basis of the pleadings. In terms of Order XIV Rule 1, issues arise when material proposition of fact or law is affirmed by one party and denied by the other. Framing of issues is not adjudicatory process. Nor it is a decisional process in itself. Framing of issues in the trial of the suit or any other proceedings facilitates adjudication and decision in the case. They are framed to identify the crux areas of controversy and focus them. The object

of framing issues is to shorten the arena of dispute, and to ascertain the real dispute between the parties. The issues can be framed or altered at any stage. Framing of issues has to be a free exercise so long as the issues stem from the pleadings and bring out the points in controversy. The issues are the points for decision. At the appellate stage they are called points for determinations in terms of Order XLI Rule 31 of the Civil Procedure Code, 1908.

12. The issues do not decide rights of any of the parties. They are framed in course of the trial by the court so as to properly address the controversy for its complete and wholesome decision. The purpose is to pinpoint the essential postulates in the controversy towards which the adjudication and ultimate decision is to be guided. As Rule 4 of Order XIV of CPC describes the issues are of two kinds-the issues of fact and issues of law. Based on contents and pleadings in the plaint and the written statement, says Rule 5 of Order XIV CPC the issues are material propositions of fact or of law the parties are at variance.

13. Reverting back to the case on hand, the application states that the issues regarding, has to be framed which are necessary for proper adjudication of the matter.

14. It is the contention of the defendants that issue regarding the point of limitation, court fee paid is in sufficient and suit is bad for non joinder of necessary parties has to be framed. As stated supra issues arise when a material preposition of fact or law is affirmed by one party and denied by other party. On the perusal of the written statement it is found that there is material preposition of law that “the court fee paid by the plaintiff on plaint for the relief of declaration of ownership and sale deed dated 07.01.2013 as null and void is in sufficient” and material proposition of fact that “the suit

is barred by the limitation” and also material proposition of fact that “the suit is bad for non joinder of necessary parties to the suit”. Such being the fact the issue has to be framed on all material preposition of fact and law as aforesaid which goes to be root of the case as rightly contended by defendants counsel.

15. In view of the in the light of the foregoing discussions of the facts and law, framing of additional issue regarding the, insufficient court fee, non joinder of necessary parties and point of limitation would be said to be proper.

16. In view of the above observations and totality of circumstances I decide point No.1 in the Affirmative.

Point No.2:

17. In view of the reasons assigned above, above, I proceed to pass the following order;

ORDER

**A No. V filed by the applicant/ defendant no.3
U/O 14 rule 5 R/W 151 of CPC is hereby allowed on
cost of Rs.200/-.**

Consequently additional issues have been framed.

To hear on Preliminary Issue.

Call on: 22.10.2021

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 29th day of September, 2021)

(NATARAJ.YADAV.S)
Senior Civil Judge & J.M.F.C
H.D Kote