

ORDER ON IA NO.I

This is an application filed by the defendant No. 6 U/o 14 Rule 5 of CPC seeking to frame additional issues as sought in the application in question.

In support of the said application defendant No.6 has filed his affidavit contending that he is conversant with the facts of the case and that the plaintiff has filed the present false suit and that the suit is hopelessly barred by limitation and bad for non-joinder of necessary parties the said contention was raised by the defendant in their written statement, but no issues has been framed in this regard and the proposed additional issues are very much necessary to adjudicate the dispute between the parties. Accordingly he sought for allowing the application.

The plaintiff has filed objection statement to the said application contending that, the present application has filed only to drag the proceedings and on the basis of the pleadings of both the parties, this court has rightly framed suitable issues and question of framing of issues as sought in the application does not arise at all. The plaintiff has issued legal notice to the defendants on 28-09-2022 and same is served to all the defendants and on the basis of said notice

cause of action was arose to file the present suit. Hence, he sought for dismissal of the application in question.

I have heard the arguments of both sides and perused the entire records, in the facts and circumstances of the case; the following point arises for consideration;

Point; Whether the 6th defendant has made out the sufficient and satisfactory grounds to allow IA No I as prayed for ?

The point under consideration is answered in the partly affirmative for the following:

REASONS

As could be seen form the contentions urged in the affidavit filed in support of the above application, the 6th defendant sought for framing of additional issues in the suit, since this court has not framed issues sought in the application in question. The plaintiffs have contended that, issues have been properly framed by this court in the suit, there is no need to frame additional issues. Having heard the arguments of both the parties, perused the record. On careful perusal the same it is noticed that in the written statement filed by the defendant, nowhere he has raised contention with regard to the limitation. However, he has taken contention suit is bad for non-joinder of necessary party as one Smt. Tanuja Kalgutkar was not made a party to the suit. It is settled law is that, a single material point of fact of

law in litigation that is affirmed by one party and denied by the other party to the suit, then question of framing issues arises. It is also settled principles of law is that, if correct and accurate issues were not framed, it leads to gross injustice, delay and waste of the court's valuable time in deciding the matter. If defendant makes no defence, framing and recording issue by the court does not arise, in such a case, a court need not frame and record issue in as much as the defendant makes no defence at the first hearing of the suit. However, in the present suit the defendant has not raised contention with regard to limitation, but raised contention with regard to non inclusion of necessary parties. However, my predecessor has not filed issue and issue in this regard casting burden on the defendant to prove that whether suit is bad for non-joinder of necessary party. Hence, in the said circumstances it is just and proper to allow the IA in part. Therefore, point under consideration is answered in the partly affirmative and proceed to pass the following:

ORDER

IA No .1 filed by the defendant No.6 is hereby partly allowed and following issues has been framed.

Whether defendant No.6 proves that suit is bad for non-joinder of necessary parties ?

Call on for plaintiff evidence.

By 11-03-2024

Sd/-

Prl. Civil Judge Karwar