

Order Below Exh.19

The defendant has filed the present application under Order XIV Rule 5 of the Code of Civil Procedure, 1908, seeking framing of additional issues on the following points:

- Whether the suit is barred by limitation;
- Whether the suit is bad for non-joinder of a necessary party?

2] The defendant contends that the agreement to sell was executed on 29.09.2005, and the suit instituted in 2019 is therefore barred by limitation under Article 54 of the Limitation Act, 1963. It is further submitted that Sanjay is a necessary party, as his interests under the alleged agreement are directly affected by the outcome of the suit.

3] The plaintiff has opposed the application, contending that the plea of limitation was not specifically raised in the written statement. The plaintiff further submits that time was not of the essence of the contract, and that the operative agreement was executed on 01.09.2014, making the suit within limitation. As regards non-joinder, the plaintiff states that an earlier application by the defendant seeking dismissal of the suit on this ground was rejected, and hence the issue stands concluded.

4] Heard learned counsel for the plaintiff. The defendant and his advocate remained absent when called. Perused the material available on record.

On the Issue of Limitation:

5] The question of limitation involves both factual and legal consideration and must be determined based on the pleadings and evidence. While the plaintiff asserts the agreement was executed in 2014, the defendant relies on the date 29.09.2005. The date of execution, the nature of the contract, and whether time was of the essence are all triable matters.

Although the plaintiff argues that the plea of limitation was not specifically raised in the written statement, the material facts relating to the date of the agreement and its enforceability have been brought on record. Thus, to enable complete adjudication, it is necessary and appropriate to frame an issue on limitation.

On the Issue of Non-Joinder of Necessary Party:

6] It is not in dispute that the defendant had previously filed an application seeking dismissal of the suit on the ground of non-joinder of Sanjay, which was dismissed by this Court. That order was passed after consideration on merits. No new or additional facts have been presented in the present application to justify reconsideration of the same issue.

Moreover, as per established principles under Order I Rule 10 of the CPC, the non-joinder of a necessary party does not automatically render the suit defective, as the Court is empowered to add such party, if required, to secure complete and effective adjudication. Therefore, the prayer for framing an issue on non-joinder of Sanjay is without merit and liable to be rejected. In view of the above, the

following order is passed:

ORDER

1. The application is partly allowed.
2. An additional issue on limitation shall be framed accordingly.
3. The prayer for framing an issue on non-joinder of a necessary party is rejected.

Dt. 04/07/2025

(M.S.Todkar)
7th Joint Civil Judge Sr.Dn,
Nagpur