

ORDER BELOW EXH. 146 & 1.

(Dt. 24/02/2020)

This is application for framing additional issues.

2. Defendant nos. 3 and 4 contended that, point of limitation of suit, necessary party and estoppel are not considered while framing issues (Exh. 46). They prayed to allow the application. The plaintiff's counsel Shri. N. B. Sangle objected this application on ground, proposed issues are not subject of issues in this suit. The issues should frame as per pleading of parties. The proposed issues are not required. He prayed to reject the application and frame additional issues of ownership of defendants on the basis of sale-deed executed by defendant nos. 1 and 2 behind legal heirs of Gangubai Santuji Taksal.

3. Perused record. Heard both sides. Learned counsel Shri. H. C. Mitkari for applicants submitted as per contents of application. Learned counsel Shri. N. B. Sangle submitted as per his say.

4. Order XIV Rule 5 of the Code of Civil Procedure,

1) The court may at any time before passing decree, amend the issues or frame additional issues on such term 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 fit to be wrongly framed or introduced.)

5. My learned predecessor framed issues of lawful possession of plaintiff, obstruction of defendants and entitlement of relief of declaration and perpetual injunction. The plaintiff claiming possession on the base of title. The defendants have created cloud on the title of the plaintiff. The plaintiff has not pleaded in respect of alleged conspiracy or collusion. Therefore, the proposed issues submitted by the plaintiff is not required. On contrary, Issue of ownership of plaintiff is required to ascertain right and liabilities. Hence, issue of title of plaintiff is material. The finding of issue of title of the plaintiff is ultimately resulted in the status of defendants. Therefore, there is no required to frame separate issue as proposed by the plaintiff.

6. In view of Section 3 of the Limitation Act, no need of defence for framing issue of limitation. The plaintiff pleaded against sale transaction and sale-deed. Similarly, the defendant's have defence of the plaintiff has not made necessary party and suit bad for that. Therefore, these are crucial points for deciding this suit. I found substance in part of application. The issue of limitation and necessary party is required to be framed. In view of the aforesaid provision, issue may add at any stage of the suit. Therefore, mere, suit fixed for argument is not sufficient to reject this application.

7. However, the plaintiff is not party of document i.e. sale-deed and he had not made any statement which the other

party believe as true and correct and acted upon. Therefore, the rule of estoppel is not applicable in this case. Under such circumstances, the alleged issue of estoppel is not required for proper adjuration of the suit and determine controversy between parties.

8. Accordingly, I found part substance in this application. If, issues are framed additionally, no harm or loss to anybody. On contrary, it will help to decide the suit on merit and proper adjudication claim of both parties. In the result, I pass following order.

ORDER

1) The application is allowed in the interest of justice and following issues shall frame accordingly :

ADDITIONAL ISSUES :

- 1-a) Does the plaintiff prove his title and ownership over the suit land ?
 - 2-a) Whether suit is within limitation ?
 - 3-b) Whether suit is bad for non-joinder of necessary party ?
- 2) Both parties have liberty to adduce evidence on additional issues.
 - 3) Order dictated on computer and pronounced in open court.

Date : 24/02/2020.

(S. A. Surjuse)
Jt. Civil Judge Jr. Division
MEHKAR

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