

**Reg.Civil Suit No.104/2014**  
(CNR No.MHKO110003172014)

**Order passed below Exh. 43.**

01. This is an application filed by defendant No.1 to 4 to frame additional issues as per Order XIV Rule 5 of Code of Civil Procedure 1908. (herein after referred as CPC for the sake of brevity).

02. This is a suit for declaration and injunction in respect of property mentioned in plaint para No.1 (herein after referred as suit property). According to defendants they filed written statement at Exh.21. They raised objection on the point of CPC order VII Rule 11(A) to (D), further on the point of valuation of suit property, on the point of limitation and description of suit property. Further they contended that issues frame at Exh.35 is not proper. To decide the matter on merit issues mention in above points need to be framed. They finally prayer allowed the application.

03. Plaintiff filed his say at Exh.45. He denied all the contention of this application. Only to mentally harass the plaintiff, defendants filed this application. As per the pleading mention in application at Exh. 43 by defendant No. 1 to 4 on the point of CPC Order VII Rule 11(A) to (D). Defendant not specific mention, on which ground plaint liable to be rejected. Further he

contended that defendant also not mention in which form plaint should be presented. Therefore, as per the pleading mention in application at Exh. 43 para No.5 proposed issue No.2 is not maintainable. Further they contended that suit property is not properly valued. If there is any objection than this objection raised by assistant superintendent of court. Therefore at this stage this defence is not taken into consideration.

04. Advocate for plaintiff submitted that they have no objection to frame proposed issue No.5 i.e. whether the suit is within limitation or not. Further they contended that proposed issue No.6 on the point of suit property is describe properly or not. Learned advocate for plaintiff contended that this is a suit for declaration and injunction. As per the provision mention in CPC order VII Rule 3 "suit property must be identified by boundaries and numbers". Plaintiffs specifically give details description of suit property i.e. in plaint para No.1. Therefore this issues need not to be framed. He finally prayer application may be partly allowed and frame the additional issue only on the point of limitation.

05. Heard learned advocate Shri. A. B. Belekar for plaintiff. Today also repeatedly called defendant and his advocate till 5.30 p.m. they are absent. Considering the record of proceeding it reveals that this application filed

on 3.11.2018. More than one year is completed. Therefore, this court today take this application for order.

06. Considering record of proceeding my predecessor framed issues at Exh.35. Defendant take an objection on the point of suit is hit by provision of Order VII rule 11(A) to (D) of CPC. It is pertaining to note here that defendant not mention specific ground on which plaint shall be rejected. As per the legal provision pleading must be supported with co-gent evidence. Defendant not produced single documents on record to reject the plaint. Therefore, this issue need not to be framed.

07. Further defendant raised objection to frame additional issues on the point of maintainability of suit in present form. Defendant not given in which form plaint should be presented. Only pleading is not sufficient. Therefore, additional issue on this point need not be framed.

08. Further defendant raise an objection to frame additional issues on the point of suit valuation. Defendant in this application para No. 5 point No. 3 and 4, these points are interlinked to each other. It is pertaining to note here that if there is any objection on

the point of valuation of suit property it will be raised at the time of filing of suit by assistant superintendent of court. I carefully studied the plaint there is not single objectionable note taken by assistant superintendent of court. Therefore, I do not find any sufficient ground to frame additional issue on the point of suit valuation.

09. Further defendant pleaded that suit property is not describe properly. Therefore, need to be frame additional issue on this point. It is pertaining note here that this is a suit for declaration and injunction. Here I take a resort of legal provision Order VII Rule 3 of CPC ***i.e. Where the subject matter of the suit is immovable property- Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.***

10. I carefully studied the plaint. It is specifically describe suit property in plaint para No. 1 boundaries along with the city survey number. Therefore I do not found sufficient ground to frame additional issued on the point of description of suit property.

11. Advocate for plaintiff have no objection to frame additional issues on the point of limitation. It is pertinent to note here that issues need to be framed on the point of mix question of law and fact. To decide the matter on merit and to avoid multiplicity in proceeding. It is proper to frame additional issued on the point of limitation.

12. Considering the above discussion this court come to conclusion to partly allowed this application. Hence I proceed to pass following order.

**- ORDER :-**

1. Application is partly allowed.
2. Additional issues is 4(A) is hereby framed along with issues framed at Exh. 35 i.e. **Whether plaintiff's suit is within limitation ?**
3. Costs in main cause.

Date 01.01.2020.

(Smt.Pankaj B.Rajput),  
2<sup>nd</sup> Jt. Civil Judge,Jr.Dn.,  
Peth-Vadgaon.

**Certificate.**

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Mrs.Rajashri Rajendra Sawant (L.G.)
Name of Court	Smt.Pankaj B.Rajput 2 <sup>nd</sup> Jt. Civil Court & J.M.F.C. Peth-Vadgaon.
Date of Dictation	01.01.2020.
Judgment signed by the P.O. on	01.01.2020.
Judgment uploaded on	02.01.2020.