

MHISO130004612015

**ORDER BELOW EXHIBIT-55**

Defendant no.1 prayed for framing of additional issues. The plaintiff has filed the say at Exh.56 and thereby strongly opposed the application. She submitted that the alleged issues are not necessary in this case. The defendant no.1 has moved this application for prolonging the trial. Hence prayed for rejection of the application.

02. I have perused the plaint and the written statement along with the documents annexed with the suit. The present suit is for partition and separate possession of suit property along with the relief of declaration. It appears from the written statement that there is no theory of defendant in the written statement that the plaintiff has been ousted by the defendants from the suit property. If there is no theory of ouster of the defendants then no question of limitation arises for partition suit. But the plaintiff has challenged the decree passed in R.C.S. No.460/2001 which was compromised in the year 2001. The plaintiff sought the relief of declaration as per Article 56 of the Limitation Act. There is three years limitation for seeking any declaration either from the date of knowledge or from the date of right to sue accrued. Whether when the right to sue accrued to the plaintiff is the core question in this suit. In that situation, the issue of limitation is important in this case. The other issue is raised about the non joinder of necessary party. However nothing is mentioned by the defendant in the written statement about how and which parties are

necessary in this suit. Considering this, proposed issue no.2 is not relevant in this case. Hence, application Exh.55 is partly allowed and proceed to frame issue of limitation at Exh.20.

Barshi.
Date : 25/07/2023.

(S.B. Vijaykar)
Jt. Civil Judge (J.D.),Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order.

(a)	Name of the Stenographer	:	S.R. Barangule
(b)	Court	:	S.B.Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	25/07/2023
(d)	Judgment /Order uploaded on	:	25/07/2023