

Order below Exh. 31 in R.C.S. No. 62/2021.

Defendant has sought framing of additional issues *vide* Order XIV Rule 5 of the CPC. It is claimed that the defendant has made specific averments regarding bar of principle of all properties in one common hotchpot and non joinder of necessary parties in his WS (Exh.18). But no issue in that regard is framed. According to him, the issues are essential for just decision in this case. Hence, this application is made. The application is strongly resisted by the plaintiff *vide* Written Say on the grounds that the application is made with a view to protract the proceeding, the defendant had opportunity to propose such issues before framing of issues and on the ground that issues framed *vide* Exh.25 are sufficient and proper to decide the suit. Accordingly, it is prayed that the application may be rejected.

2. Perused application, say and the record. Heard both sides.

3. From perusal of record it is clear that the defendant has resisted the suit *vide* W.S. (Exh.18) and accordingly, issues (Exh.25) were framed on 03/02/2023. The W.S. clearly support the application of defendant that specific averments regarding bar of principle of *all properties in one common hotchpot* and *non joinder of necessary parties* were made in WS (Exh.18). These objections go to the roots of the suit. Issues in that regard were essential. However, no such issue appears to have framed in issues (Exh.25).

4. Needless to mention that application for recasting of issues or framing additional issues can be made *at any stage* of the suit. Hence, it cannot be said that present application is moved at a belated stage or for protracting the

trial. In the circumstances, objections raised by the plaintiff *vide* Written Say have no substance. *On the contrary*, application for framing additional issues deserves to be allowed as no prejudice would be caused to the plaintiff if such issues are framed. Hence, following order is passed :-

ORDER

1. Application (Exh.31)is allowed.

Following additional issues are framed:-

(i) Whether the suit is bad in law due to bar of principle of *all properties in one common hotchpot?*

(ii) Whether this suit is bad for *non-joinder* of necessary parties ?

2. Costs in the main cause.

Date : 21/07/2023.

(P.S.Govekar)
2nd Jt. C.J.J.D., MOhol.