

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 294 OF 2015
IN
SUIT NO. 1071 OF 2008
WITH
NOTICE OF MOTION NO. 1185 OF 2018

Farook Kassam Dagli & Ors	...Plaintiffs
<i>Versus</i>	
Elyas Taiyab Ahmed & Ors	...Defendants

Mr Chandra Naik, *for Plaintiff & Applicant in NMS/294/2015.*
Mr S Shamim, *with M Slatewala, i/b Shamim & Co., for Defendants*
Nos. 1 & 2 & Applicants in NMS/1185/2018.

CORAM: G.S. PATEL, J
DATED: 4th March 2019

PC:-

1. Notice of Motion No. 294 of 2015 is by the Plaintiffs submitting draft issues. Notice of Motion No. 1185 of 2018 is a hybrid which seeks that an issue of limitation be framed and then asks that a preliminary issue be framed under Order VII Rule 11(d) of the Code of Civil Procedure 1908. The second prayer is misconceived. It is always open to a Defendant to file a substantive application for rejection of the plaint by making out a ground under

Order VII Rule 11 and there is no question of framing an issue under that order. At best an issue of maintainability can be framed.

2. I notice that there were issues framed earlier by SC Gupte J on 19th September 2014. I see no reason to include any of the issues Nos. 1 to 4 at Exhibit “A” of the Plaintiffs’ Notice of Motion.

3. In any case, the filings of these Notices of Motion to frame issues is neither appropriate nor desirable. Issues can be framed at any time before judgment is delivered and it is always open to a party to submit that an issue arises and ought to have been considered by the Court.

4. Thus, two further issues will be added:

(x) Whether the suit is barred by limitation?

(y) Whether the suit as filed is maintainable?

5. Issues as earlier framed and with these two additional issues are appended to this order.

6. Both Notices of Motion are disposed of in these terms. There will be no order as to costs.

7. The Plaintiffs wish to file a Chamber Summons regarding some subsequent events. For that purpose I am not issuing directions for filings.

(G. S. PATEL, J)

**ISSUES FRAMED ON 19TH SEPTEMBER 2014 AND
4TH MARCH 2019**

SUIT NO. 1071 OF 2018

1. Whether the Plaintiff proves that there is a valid, subsisting and binding oral agreeemnt between the parties as alleged in paragraph 6 of the plaint?
2. Whether the Plaintiff proves that the Plaintiff has been and is ready and willing to perform his part of the oral agreement referred to in paragraph 6 of the plaint?
3. Whether the Plaintiff proves that the Plaintiff is entitled to specific performance of the oral agreement referred to in paragraph 6 of the plaint?
4. Whether the Plaintiff proves in the alternative that the Plaintiff has been in uninterrupted use, occupation and possession of the suit property for more than 12 years?
5. Whether the Plaintiff proves that the Plaintiff is the owner of the suit property by reason of adverse possession?
6. Whether the suit is barred by limitation?
7. Whether the suit as filed is maintainable?
8. What order?

(G. S. PATEL, J.)