

is dated 12 August 2009, the suit filed in the year 2019 is barred by law of limitation. Copy of issues framed by the trial Court on 4 March 2024 is on Page No.37. In all there are four issues framed. They are as follows:-

- (i) Issue No.1 pertains to proof of an agreement dated 12 August 2009.
- (ii) Issue No.2 pertains to readiness and willingness on the part of the plaintiff to perform their part of contract.
- (iii) Issue No.3 pertains to the proof by the defendants that the agreement dated 12 August 2009 was only a nominal agreement.
- (iv) Issue No.4 pertains to entitlement of the plaintiffs to the relief of specific performance.

3. Admittedly, there is no issue of limitation. My attention is invited to the averments in Para No.8 of the plaint at Page No.20.

4. The learned Advocate for the petitioners have also invited my attention to the reply filed on behalf of the plaintiffs which is on Page No.39. In fact, the plaintiffs have averred that the issue of limitation is question of law and it can be framed by the Court at any time. The averments of the plaintiffs is on different aspects. They have invited the attention of the trial Court to the conduct of the defendants in filing one application after another and delaying the hearing of the suit. It seems that the trial Court after considering the

record thought it fit to reject the application on the basis of the objection taken by the plaintiffs. In fact it is a settled law that the issue of limitation has to be considered by the trial Court. It is true it is a mixed question of facts and law. In fact there is duty cast upon the Court to frame the issue of limitation. In this case defendants have contended that the suit is barred by law of limitation. In view of that if the petitioners-defendants can show their bonafides in conducting the cross-examination, let them show it by conducting the cross-examination on 16 December 2024.

5. The petitioners can again request the trial Court about their prayer. It is settled law, whether parties agitate or not, trial Court has to frame issue of limitation.

6. Considering the above observations and considering the position of law, the learned trial Judge can take a relook on the application for framing of additional issue. Trial Court to verify whether pleadings are there or not.

7. In view of that, the **writ petition is disposed of.**

(S.M. MODAK, J.)