

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 7 OF 2014

RANGNATH GYANBA AGARKAR AND OTHERS

VERSUS

REKHA DASHRATH MALI

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Advocate for Petitioners : Mr. Deshpande C. R.

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CORAM : S. V. GANGAPURWALA, J.**DATE : 24th August, 2015****PER COURT :**

1. Mr. Mr. Deshpande, learned counsel for the applicant submits that the application under Order 7 Rule 11 of the Code of Civil Procedure has been rejected by the learned Court without considering the objections in its correct perspective. The issue of limitation also can be decided under section 9A. According to the learned counsel, after the judgment of the Full Bench of this Court in a case of **Badrinarayan Shankar Bhandari & ors. Vs. Omprakash Shankar Bhandari, reported in 2014 (5) ALL MR 846**, the legislature has repealed the Amending Act i.e. the Hindu Succession (Amendment) Act 2005. In view of the repeal of the said Amending Act, the position, as it stood as per the Maharashtra Amending Act, will have to be considered. These aspects also require to be considered by the Court. According to the learned counsel, the trial Court has failed to exercise the jurisdiction vested in it and thereby arrived at erroneous conclusion.

2. I have gone through the order passed by the Trial Court. The trial

court has observed that the objection of limitation is a mixed question of law and facts. As such the plaint cannot be rejected on the said count. Even the effect of filing of earlier suit and withdrawal thereof would be considered at the time of final trial.

3. The Court has also kept open the objection of the respondents with regard to the right of the plaintiff to claim partition in respect of ancestral property in the life time of her father. All these aspects are kept open by the trial court. The trial court has observed that application under Order 7 Rule 11 (D) of the Code of Civil Procedure can be considered on the basis of pleadings in the plaint.

4. As far as the repeal of the Amending Act, 2015 is concerned, the same may not enure to the benefit of the applicant. Reading clause 4 of the repealing and Amending Act, 2015 in its entirety, more particularly clause (4) states that the repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to. The pleadings were already on record. Considering the same, the argument in this respect also cannot be considered. In the light of that the Civil Revision Application is rejected, however, with no order as to costs.

(S. V. GANGAPURWALA, J.)