

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 272 OF 2012

Dhanwantsingh Balwantsingh Kadewale .. Petitioner

Versus

1. Sou. Sangita Rani D/o Surendrasingh
W/o Jagdipsingh and others .. Respondents

Shri Anil H. Kasliwal, Advocate for the Petitioner.

Shri A. D. Kasliwal, Advocate for the Respondent No. 1.

The Respondent Nos. 2 to 6 deleted.

CORAM : S. V. GANGAPURWALA, J.

DATE : 25TH AUGUST, 2015.

PER COURT :

. Mr. A. H. Kasliwal, the learned counsel for the petitioner strenuously contends that, the suit filed by the plaintiff for partition, declaration and cancellation of sale deed *ex-facie* is barred by limitation. The source of knowledge is said to be publication, however, no date of publication has been mentioned. The learned counsel submits that, if the facts on record are perused, it is crystal clear that the suit is barred by limitation and said aspect can be considered by the learned Trial Court U/O 7 Rule 11 of the Code of Civil Procedure. The Trial Court has failed to consider the said aspect. The learned counsel submits that, even a preliminary issue can be framed with regard to limitation and maintainability U/Sec. 9-A of the Code of Civil Procedure. The learned counsel submits that, the objection is also raised with regard to pecuniary

jurisdiction, though may not be germane at this stage, but the objection was with regard to maintainability of suit on the ground of pecuniary jurisdiction as well as limitation and was required to be considered and preliminary issue was required to be framed in that regard in case the Court was satisfied. The pleadings in the plaint also do not show that the suit is within limitation and is filed after three years of the knowledge of the sale deed.

2. Mr. A. D. Kasliwal, the learned counsel for the respondent No. 1 supports the order and submits that, the Court has rightly considered all the aspects of the matter.

3. Now the suit is with the Court of Civil Judge Senior Division having unlimited jurisdiction. In the light of that, the objection with regard to pecuniary jurisdiction would not survive. The objection with regard to limitation is a mixed question of law and fact. The Court has also observed that the earlier application was moved in that regard below Exhibit 57, wherein the Court declined to frame the preliminary issue of limitation. The Court has not closed the doors of the present petitioner. It has said that the issues would be decided together including issue of limitation. Considering the above no case of interference is made out. The civil revision application as such is dismissed. No costs.

[S. V. GANGAPURWALA, J.]