

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11805 OF 2014

SHIVAJI GANGADHAR LABADE AND OTHERS
VERSUS
NAVNATH LAXMAN LADHANE AND OTHERS

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Advocate for Petitioners : Shri More Abhijit S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 20, 2015

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PER COURT :-

1. The petitioners are the defendants in RCS No.150 of 2008. Issues have been cast on 5.2.2014. Application Exhibit 150 is filed on 17.9.2014 and application Exhibit 157 is filed on 31.10.2014. By the impugned order, dated 5.11.2014, application Exhibit 157 has been partly allowed. Learned Advocate for the petitioners submits across the Bar, that the petitioners do not desire to question the said order in this petition.

2. By the impugned order dated 8.10.2014, application Exhibit 150 for framing additional issues has been rejected. The petitioners submit, across the Bar, that the challenge as regards the proposed issue Nos.1 and 2 is not being pressed in this petition. The petitioners are aggrieved by the impugned order dated 8.10.2014 to the extent that the issue as regards whether the suit was filed within limitation, has not been framed.

3. Submission of the petitioners is that if the suit is barred by limitation, the trial Court would be divested of its jurisdiction to entertain

the suit. By rejecting application Exhibit 150, the trial Court has caused injustice to the petitioners. A suit which is otherwise untenable on account of limitation, is likely to be entertained by the trial Court.

4. I find that the submissions of the petitioners and their apprehension, are misconceived. No doubt the trial Court has observed in the impugned order dated 8.10.2014 that the petitioners have not raised the issue of limitation in the written statement. Nevertheless, the observations of the trial Court, in the impugned order, in my view sufficiently protect the interest of the petitioners.

5. In the event a suit is barred by limitation and it is so revealed that the said suit is time-barred, a competent Court may consider the said aspect after giving an opportunity of hearing to the litigating parties. In the instant case, while rejecting application Exhibit 150, the trial Court has observed as under:-

" Further it is very clear that, if it is found that, prayer in respect of the sale deed was not claimed within the period of limitation issue No.3 will be answered in the negative. In the circumstances there is no need to frame issue No.3."

6. In the light of the observations reproduced above, it is clear that the issue of limitation is being looked into by the trial Court. The insistence of the petitioners that an issue needs to be framed, without any pleadings in the written statement, has been rejected by the trial Court, since, it

appears that the trial Court would be considering the aspect of limitation.

7. The learned Advocate for the petitioners submits that none of the other litigating parties in RCS No.150 of 2008 have questioned the impugned order dated 8.10.2014 as on date.

8. In the light of the above, I do not find that this petition deserves to be entertained and is, therefore, disposed off with the above observations.

(RAVINDRA V. GHUGE, J.)

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