

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

CRA NO. 233 OF 2014

SARDARSINHA GOPALSINH GOUR
VERSUS
SWARUPSINH GOPALSINH GOUR AND OTHERS

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Advocate for Petitioner : Mr.B.M.Dhanure h/f Nagarkar Kiran M.
Advocate for Respondents : Mr.A.N.Sabnis h/f Gour Rashmi P Adv For R/1 To 8

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CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

The application filed for dismissal of the suit on point of limitation has been rejected. Aggrieved thereby, the present revision. The learned counsel for the petitioner submits that the sale deeds of which declaration is sought is of the years 1994-2000. The suit is filed in the year 2009. The suit was barred by limitation even applying Article 58 of the Limitation Act. According to the learned counsel, the Court has not considered the said aspect. Even plaintiff has not pleaded nor adduced any evidence to show that he got knowledge of the sale deed subsequently. According to the learned counsel, the Court ought to have dismissed the suit as being barred by limitation.

2] Mr.Sabnis, learned counsel for respondents submits that principal relief claimed in the suit is seeking partition and separate possession. If relief for partition and separate possession is granted, it would necessarily follow the sale deed is not binding upon plaintiff.

According to the learned counsel from the date of the knowledge of the sale deed, suit was within limitation. Pleading to that effect has been rightly made.

3] With the assistance of learned counsel, I have gone through the order. The issue of limitation is a mixed question of law and fact. The pleading will have to be proved. The sale deeds are of the years 1994-2000. The date of knowledge of the execution of sale deeds would be relevant date. The plaintiff has stated that he got knowledge of the sale deed subsequently but did not step into witness box to prove said fact. Whether Articles 58 and 59 would be applicable would have to be decided by the Court vis-a-vis relief claimed however said aspect shall be decided after adducing evidence.

4] Considering above, the impugned order cannot be sustained. The impugned order is quashed and set aside. The Court shall frame issue of limitation and shall decide the said issue alongwith all other issues at the time of final disposal of the suit. Civil Revision Application accordingly disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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