

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3158 OF 2015

Shri Jagdish Shyamrao Thorve and Anr.] ... Petitioners/
(Orig. Plaintiffs)

Versus

Dr. Shri Mohan Sitaram Dravid and Ors.] ... Respondents/
(Orig. Defendants)

Mr. Vivek V. Salunke for Petitioners.
Mr. Jaydeep Deo for Respondent No.4.

CORAM :- M. S. SONAK, J.
DATE :- APRIL 27, 2015

P. C. :-

1. This petition challenges Order dated 14/11/2014 made by the Civil Judge, Senior Division, Pune, to the extent it directs framing of issue of limitation as a preliminary issue under Section 9A of the CPC and parties are directed to lead evidence on the point of limitation.

2. Earlier, the Hon'ble Apex Court, in the case of *Kamalakar Eknath Salunkhe Versus Baburav Vishnu Javalkar and Ors.*¹ has held that under the scheme of Section 9A of the CPC, issue of limitation cannot be framed as a preliminary issue. However, in its

¹ Civil Appeal No.1085 of 2015

later Judgment in the case of *Foreshore Co-operative Housing Society Limited Vs. Pravin D. Desai (Dead) Thr. Lrs. and others*², the Hon'ble Apex Court has held that its earlier decision in *Kamalakar Salunkhe* (*supra*) did not lay down the law correctly and that issue of limitation can be framed as a preliminary issue.

3. Therefore, considering the aforesaid legal position, it cannot be said that the impugned order is vitiated by any error of jurisdiction.

4. This petition is accordingly not entertained. There shall be no order as to costs.

5. All parties to be permitted to lead evidence on the point of limitation and all contentions in this regards are kept open.

6. All parties to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

² Civil Appeal No.7732 of 2011 – 2015 SCC OnLine SC 302