

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO.181 OF 2014  
WITH  
CIVIL APPLICATION NO.446 OF 2014

Jalindernath Laxman Mhatre ... Appellant  
Vs.  
The Collector, Thane and others ... Respondents

Mr. R. D. Soni with Mr. S. N. Gawade i/b. M/s. Shree & Company for Appellant.  
Mr. R. S. Apte, Senior Advocate i/b. Mr. Mandar Limaye for Respondents No.3 to 7.  
Mr. Rajan Pawar, AGP for Respondents No.1 and 2.  
Mr. G. S. Hegde for Respondent No.8.

**CORAM : R. G. KETKAR, J.**  
**DATE : 7<sup>TH</sup> APRIL, 2015**

**P.C. :**

Heard Mr. Soni, learned Counsel for the appellant, Mr. Pawar, learned AGP for respondents No.1 and 2, Mr. Apte, learned Senior Counsel for respondents No.3 to 7 and Mr. Hegde, learned Counsel for respondent No.8 at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original plaintiff has challenged the judgment and order dated 14.08.2012 passed by the learned Civil Judge, Senior Division, Thane below exhibit-49 in Special Civil Suit No.503 of 2002 as also the judgment and decree dated 18.02.2014 passed by the learned Ad-hoc District Judge-2, Thane in Civil Appeal No.334 of 2012. By these orders, the Courts below dismissed the Suit instituted by the appellant, hereinafter referred to as the plaintiff, on the ground that the same is barred by limitation.

3. Mr. Apte submitted that respondents No.3 to 7 had filed application under Section 9-A C.P.C. for deciding preliminary issue of limitation. The Courts below held that the Suit instituted by the plaintiff is barred by limitation. Mr. Apte fairly submitted that in view of the decision of the Apex Court in *Kamalakar Eknath Salunkhe Vs. Baburav Vishnu Javalkar and ors.*, **2015 (2) Mh.L.J. 886**, the issue of limitation cannot be framed and decided as a preliminary issue under Section 9-A C.P.C. Mr. Apte, after arguing the Appeal for some time, upon taking instructions from the respondent No.3 who is present in the Court, states that the impugned orders may be set aside. The Suit instituted by the appellant may be restored to the file of the trial Court. The trial Court may be directed to frame the issues including the issue whether the Suit is barred limitation. He submitted that all the issues may be tried together. He further submitted that no reasons be recorded for disposing of this Appeal.

4. In view thereof, Appeal is allowed in the following terms:

- a. The impugned judgment and order dated 14.08.2012 passed by the learned Civil Judge, Senior Division, Thane below exhibit-49 in Special Civil Suit No.503 of 2002 as also the judgment and decree dated 18.02.2014 passed by the learned Ad-hoc District Judge-2, Thane in Civil Appeal No.334 of 2012 are quashed and set aside;
- b. Special Civil Suit No.503 of 2002 instituted by the appellant is restored to the file of the learned trial Court;
- c. The learned trial Court shall frame the issues on the basis of the pleadings of the parties, one of them being the issue as regards limitation. Parties will be at liberty to lead evidence;
- d. The parties are at liberty to request the trial Court for

expeditious disposal of the Suit in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order;

- e. All the contentions of the parties on merits are expressly kept open;
- f. In the meantime, interim order passed in terms of minutes of order dated 14.10.2013 in Appeal from Order No.796 of 2013 shall remain in force pending the Suit;

5. In view of the disposal of the Appeal, Civil Application No.446 of 2014 for stay does not survive and the same is disposed of as such.

(R. G. KETKAR, J.)

*Minal Parab*