



**Lrs. and others**<sup>2</sup>, has taken a view that the issue of limitation is a proper issue to be framed under Section 9A of the CPC. In fact, the Judgment in the case of **Kamalakar Salunkhe** (*supra*) has been held to be *per incuriam*.

3. In view of the aforesaid, there is no reason to interfere with the impugned order. However, at the stage of framing of a preliminary issue, there was no justification in making observation or remark to the effect that the Plaintiff was aware of the execution of agreement dated 21/04/1998. Such observation, at this stage, is obviously premature.

4. Accordingly, although the impugned order is not being interfered with, it is directed that the learned Civil Judge shall proceed to decide upon the preliminary issue so framed, without in any manner being influenced by the observations made in the impugned order dated 15/12/2014. The learned Civil Judge is directed to dispose of the preliminary issue expeditiously, and in any case within a period of three months from today, after affording both the parties opportunity of leading evidence, in case they so desire.

5. With this observation, this petition is disposed of.

(M. S. SONAK, J.)

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<sup>2</sup> Civil Appeal No.7732 of 2011 – 2015 SCC OnLine SC 302