

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1027 OF 2014

Smt. Tulsabai M. Lahange and ors. .. Applicants/Petitioners
vs.
Kai Laxman S. Lahange
(since deceased through Lrs.)
and ors. .. Respondents

Mr. S.P. Shinde for the Applicants/Petitioners.
Mr. Tushar Sonawane for Respondent Nos.1A to 1F, 2A to 2C,2E, 2F,
3, 3B, 3C, 4A, 6 and 7A to 7B.

CORAM : M. S. SONAK, J.
DATE : 15 April, 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This Civil Revision Application challenges the order dated 11 July 2014 made by the Civil Judge, Senior Division at Nashik rejecting the applicants' application vide Exhibit-16 to the effect that the suit was barred by law of limitation as well as under Section 36-C of the Maharashtra Land Revenue Code, 1966 (said Code).

3] In so far as the issue of limitation is concerned, the impugned order states that the same will be decided at the time of final hearing. Considering that the applicants had invoked the provisions

of Section 9A of the Code of Civil Procedure, 1908 (CPC), the learned Civil Judge cannot be said to be right in postponing the decision on the issue of limitation to the final hearing of the suit. Such an approach would run counter to the decision of the Hon'ble Apex Court in case of *Foreshore Cooperative Housing Society Limited Vs. Praveed D. Desai (dead) thr. Lrs. and others*¹. In the said case, the Hon'ble Apex Court has held that the provisions contained in Section 9A as introduced by the (Maharashtra Amendment) Act are mandatory in nature, being a complete departure from the provisions contained in Order XIV, Rule 2 of CPC. Accordingly, the directions in the impugned order that the limitation issue will be decided at the time of final hearing are required to be set aside.

4] The matter shall have to be remanded to the learned Civil Judge for deciding the issue of limitation as a preliminary issue, based upon the evidence already led by the parties or such further evidence which the parties may choose to lead on the issue of limitation. Considering the matter is being remanded to the learned Civil Judge, opportunity of leading evidence/further evidence is being granted to both the parties.

¹ Civil Appeal No. 7732 of 2011 decided on 8 April 2015

5] In so far as the bar of jurisdiction under Section 36-C of the said Code is concerned, the impugned order notes that the agreement in-question was, *inter alia*, between Gangubai K. Lahange and the predecessor-in-title of the respondents herein, i.e., Laxman S. Lahange. In fact, it is not even the case of the applicants that either of the said Lahanges were tribal. The case of the applicants is that Smt.Gujrabai Bhoru Kharate (applicant No.2) is the married daughter of late Gangubai K. Lahange. Gujrabai having married one Mr. Bhoru Kharate, who is a tribal, she has also attained the status of a tribal. The learned counsel for the applicants made reference to the Caste Validity Certificate of Smt. Kharate Gujrabai Bhoru, which indicates that the status of applicant No.2 is that of a tribal. Learned counsel for the applicants also made reference to revenue records which also indicate that the suit property *inter alia* belongs to the applicant No.2 and same is indicated as the property owned by the tribal.

6] In the aforesaid circumstances, learned Civil Judge is right in holding that the bar under Section 36-A of the said Code will not apply, because the agreement in the first instance, was not between a tribal and a non-tribal. Merely because, Smt.Gujrabai Bhoru

Kharate-the applicant No.2, on account of her marriage claims the status of a tribal, that by itself will not constitute breach of Section 36-A of the Code, so as to oust the jurisdiction of the Civil Court to decide the issue raised in the suit. Accordingly, it cannot be said that there is any jurisdictional error on the part of the learned Civil Judge in holding that its jurisdiction to try the suit is not barred under Section 36-C of the said Code. There is accordingly, no need to interfere with that part of the impugned order.

7] Rule is accordingly, made partly absolute. The directions contained in the impugned order that the issue of limitation will be decided at the time of final hearing is set aside. The learned Civil Judge is directed to decide the issue of limitation as a preliminary issue, after afford of an opportunity to the parties to lead evidence/further evidence. The learned Civil Judge shall decide such issue within a period of four months from today.

8] It is clarified that this Court has not gone into the merits of the matter in so far as the issue of limitation is concerned. Accordingly, all contentions of all parties in this regard are kept open for the decision by the learned Civil Judge.

9] Accordingly, Civil Revision Application is disposed of. There shall be no order as to costs.

(M. S. SONAK, J.)

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