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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2037 OF 2014

Bapu Shankar Patil

PETITIONER

Age – 68 years, Occ – Agriculture
R/o Ujjwal Colony, Tongaon, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
(Address in plaint : R/o Yashwant Nagar,
Bhadgaon, Taluka – Bhadgaon, District – Jalgaon)

VERSUS

1. Ajay Vana Marathe (Patil) RESPONDENTS
Age – 51 years, Occ – Labour
R/o Surat, Taluka and District – Surat
2. Sanjay Vana Marathe (Patil)
Age – 42 years, Occ – Labour
R/o Bahiram Galli, Parola,
Taluka – Parola, District – Jalgaon
3. Ratnabai Subhash Patil,
Age – 50 years, Occ – Household and Agriculture
R/o Ganjewada, Bhadgaon,
Taluka – Bhadgaon, District – Jalgaon
4. Raju Vana Marathe (Patil)
Since deceased through his LRs.
- 4A. Ratnabai Raju Marathe (Patil)
Age – Major, Occ – Labour
- 4B. Sagar Raju Marathe (Patil)
Age – Major, Occ – Labour
- 4C. Prashant Raju Marathe (Patil)
Age – Major, Occ – Labour
- 4A to 4C R/o Toli, Taluka – Parola,
District – Jalgaon
5. Prabhakar Vana Marathe (Patil)

Since deceased through LR's.

5A. Alkabai Prabhakar Marathe (Patil)
Age – Major, Occ – Household

5B. Rahul Prabhakar Marathe (Patil)
Age – 30 years, Occ – Labour

Both R/o Surat, Taluka and District - Surat

5C. Anita Sanjay Patil,
Age – Major, Occ – Household
R/o Nandurbar,
Taluka and District – Nandurbar

5D. Sunita Vilas Patil,
Age – Major, Occ – Household
R/o Dabali, Taluka – Malegaon
District – Nashik

5E. Vaishali Ranjit Patil,
Age – Major, Occ – Household
R/o Surat,
Taluka and District – Surat

5F. Mayabai Deepak Patil,
Age – Major, Occ – Household
R/o Sakri, Taluka – Sakri
District – Dhule

6. Rikhmabai Vana Marathe (Patil)
Age – 75 years, Occ – Household
R/o Bhiram Galli, Parola,
Taluka – Parola, District – Jalgaon

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Mr. Pushkar S. Shendurnikar, Advocate for the petitioner
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocate of appearing party finally with consent. No appearance is caused on behalf of the respondents, though duly served.

2. The petitioner is before this court aggrieved by order dated 20th February, 2014 passed by Civil Judge, Junior Division, Bhadgaon, upon an application filed by the petitioner pursuant to section 9A of the Civil Procedure Code, questioning jurisdiction of the court of civil judge, junior division on the ground of limitation as well as pecuniary jurisdiction.

3. Learned advocate for the petitioner contends that the plaintiffs seek cancellation of sale deeds executed in 1987 by filing suit in 2014 whereas the period of limitation prescribed under the Limitation Act is of three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside first become known to him. It is further being submitted that necessary mutation entries have been taken immediately after execution of the sale deeds. Here, the petitioner claims that the sale deeds were executed in the year 1987 and the suit has been instituted in 2014. It is further contended that the plaintiffs are required to pay court fee upon

the market value of the suit property at the time of institution and not on the value at which the property was sold in 1987. In the circumstances, having regard to Articles 58-59 of the Limitation Act, 1963 the questions with regard to suit being within limitation as well as whether the court of civil judge, junior division would have pecuniary jurisdiction do arise in the present matter.

4. Learned advocate further states that while a request under application Exhibit-25, referred to above, had been made for framing preliminary issue having regard to section 9A (Maharashtra Amendment) of the Civil Procedure Code, the same has been turned down under an erroneous impression. Learned advocate further submits that *ad interim* injunction is in operation against the petitioner and the suit proceedings have further been stayed by this court and it is the plaintiffs who are reaping benefits from said situation. He, therefore, urges to decide the petition in right earnest.

5. It is submitted that while *ad interim* injunction is operating against the petitioner, learned judge of the trial court has erroneously decided to go on with decision on temporary injunction application first, before deciding on application

Exhibit-25. He submits that the appreciation of sub clause 2 of section 9A of the Civil Procedure Code, as appearing from the impugned order is wholly misplaced. He submits that the question is not being raised about power of the court to grant interim orders while considering application pursuant to section 9A of the Civil Procedure Code. Such a power has already been exercised by the trial court and said order is in operation. In the circumstances, the application ought to have been given proper treatment, having regard to legislative intent underlying incorporation of section 9A to the Civil Procedure Code under the Maharashtra Amendment.

6. Mr. Shendurnikar, learned advocate further purports to rely on a decision of the Supreme Court in the case of *“Foreshore Co-operative Housing Society Limited V/s Praveen D. Desai (Dead) through Legal Representatives and Others”* reported in (2015) 6 SCC 412, which according to him throws lot of light on the object underlying incorporation of section 9A into the Civil Procedure Code under the Maharashtra Amendment.

7. To aforesaid submissions there is no resistance coming forward or rather may be it is a calculated strategy to keep away from court, taking benefit of *ad interim* order. Learned advocate further submits that as yet the temporary injunction application

is pending and is not decided finally.

8. Having regard to aforesaid and since there is no opposition, I deem it appropriate to allow the writ petition and quash and set aside the impugned order dated 22nd February, 2014 passed by Civil Judge, Junior Division, Bhadgaon in Regular Civil Suit No.1 of 2014 with further direction to decide application Exhibit-25 in right earnest, giving opportunity to the parties concerned.

9. Writ petition accordingly stands allowed accordingly. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]