

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10305 OF 2014

Rambhau Dnyanoba Kolhe and Others ..PETITIONERS

VERSUS

Vijay Babu Dabhade and Another ..RESPONDENTS

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Mr. N.R. Pawade, Advocate for petitioners.

Mr. B.A. Shinde, Advocate for Respondent Nos. 1 and 2.

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**CORAM : T.V. NALAWADE, J.
DATED : 21st DECEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made on Exhibit 32 in Regular Civil Suit No. 47 of 2013. The suit is filed by present respondent – Vijay and others for relief of partition against present petitioners and father of Vijay. Both sides are heard.

2. The application at Exhibit 32 is filed under provision of Order 7 Rule 11 of the Code of Civil Procedure by present petitioners who have purchased the property from father of Vijay under sale deed on January, 2004. It is the case of the plaintiff that property purchased by present petitioners is the ancestral property of Babu and so petitioners have share

in the property. The Trial Court has rejected the application at Exhibit 32 by holding that point of limitation which is raised by petitioner in the the matter is mixed question of law and fact and it needs to be decided alongwith other issues. In view of aforesaid nature of suit, Article 109 of the Limitation Act needs to be kept in mind. It prescribes period of 12 years as limitation for filing suit when there is challenge to the alienation made by Karta – father of joint Hindu family. Apparently the suit is filed within 12 years and so there is no force at all in the ground taken for Order 7 Rule 11 of the Code of Civil Procedure.

3. Learned Counsel for petitioner placed reliance on the case reported as **2011 (1) Mh.L.J. 939 (Kanayalal Madhavji Thakkar Vs. Shree Padmanabh Builders)**. In this case this Court has laid down that for considering the point of limitation which is raised under Order 7 Rule 11(d) of the Code of Civil Procedure the objection needs to be considered. This proposition cannot be disputed. Learned Counsel for respondent placed reliance on the case reported as **2015(5) Mh.L.J. 853 (Basheer Amir Patel (Since deceased) Through L.Rs. Madina Bee Bashir Patel and Others Vs. Dnyaneshwar Bhikarchand through its L.Rs. Dattu Dnyaneshwar Sonawane and Others)**. In that case this Court has discussed the law regarding alienation made of joint Hindu family

property by Karta and Article 109 of the Limitation Act is also discussed. This Court has also held that Article 109 of the Limitation Act would apply. This Court holds that it is not possible to interfere in the order made by the Trial Court. In the result, petition stands disposed of as dismissed. Interim relief, if any granted, is vacated.

(T.V. NALAWADE, J.)

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