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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 5312 OF 2013

Mr. Rakesh Ramratan Khandelwal and Anr. ... Petitioners.

V/s.

Mr. Uttam Namdeo Dundrekar and Ors. ... Respondents.

Mr. S.M. Sabrad for the Petitioners.

Mr. G.S. Godbole a/w. A.B. Tajane for Respondents 1 to 5.

CORAM : N.M. Jamdar, J.

25 October, 2016.

Oral Order :-

The order impugned is dated 5 October 2012 and by way of an interim order passed in this Writ Petition, the proceedings in the suit have been stayed.

2. By the impugned order the learned Civil Judge has directed the Petitioner to lead evidence first on the preliminary issues framed. The first issue that is framed is regarding the valuation and secondly as to whether the suit is barred by limitation. The issues have been framed under Section 9-A of the Code of Civil Procedure.

3. As far as the valuation and consequent payment of court fees is concerned, generally the Court will go by the valuation made by the Plaintiffs unless shown that it is arbitrary and palpably incorrect. Therefore, the burden of demonstrating the same would be on the Defendants. The same is the position as regard the preliminary issue of limitation. The Order 18 Rule 1 of the Code of Civil Procedure does state that the Plaintiff has right to begin but also provides that when the Defendant contends that either any point of law or some other additional fact, the Plaintiff is not entitled to any part of relief, in such case the Defendant would proceed. In any case the issue is framed as regard limitation and the main question that to be decided whether the suit is within limitation. The order passed cannot be stated to be such that it will cause irreparable prejudice or that the order is without jurisdiction, so as to warrant the interference under Article 227 of Constitution of India. The Writ Petition is accordingly rejected. The learned Civil Judge will proceed with the proceedings and adjudication of preliminary issues framed as expeditiously as possible.

(N.M. Jamdar, J.)