

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1685 OF 2016

Gorakh Jyotiba Bhalekar
Age 67 years, Occ. Agriculture,
R/o Sawargaon, Taluka
Tujlapur Dist. Osmanabad. ..Petitioner

Versus

1. Rajendra Babu Dhotre
@ Rajendra Gorakh Bhalekar
Age 34 years, Occ. Agriculture
R/o Sawargaon, Taluka
Tujlapur Dist. Osmanabad.
2. Sugalabai Babu Dhotre
Age 63 years, Occ. Household,
R/o Sawargaon, Taluka
Tujlapur Dist. Osmanabad. ..Respondents

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Advocate for Petitioner : Shri Kulkarni Krishna K.
Advocate for Respondent 1 : Shri Patil S.Y. h/f Shri Deshmukh V. B.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 13, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the

petition is taken up for final disposal.

4. The petitioner / plaintiff is aggrieved by the framing of an issue on 26.2.2015, *suo moto*, by the trial Court and prays that the said issue be struck down.

5. Shri Kulkarni, learned Advocate for the petitioner has strenuously criticized the order dated 26.2.2015, by which, the trial Court has held as under:-

" After going through the record, it appears that an issue in respect of the limitation ought to have been framed. After going through the issues framed at Exh.16, it can be seen that issue in respect of limitation has not been framed at all. To determine the real controversy between the parties once and for all, the framing of issue in respect of limitation is at most much essential. The court may frame such additional issue at any stage of proceeding. Hence, such issue as follows is hereby framed:-

Issue No.3-A :- Whether the suit is within limitation?"

6. Grievance is that the effect of Order VIII Rule 2 of the CPC in the backdrop of the defendant having not raised the issue of

limitation, read with Order XIV Rule 1(6) of the CPC would give no liberty to the trial Court to *suo moto* frame an issue of limitation. Contention is that, in the absence of any pleadings by the defendants and the challenge to the maintainability of the suit on the ground of limitation, the trial Court has no jurisdiction to frame the issue of limitation.

7. Learned counsel appearing for respondents, who are son and mother, has defended the impugned order.

8. I have considered Order VIII Rule 2 and Order XIV Rule 1(6) of the CPC in the light of the submissions of the petitioner.

9. It is trite law that when a litigant prefers a suit, a formal declaration that the suit is filed within limitation has to be made so as to enable the plaintiff to support his contention, that the suit is filed within limitation, through oral and documentary evidence. The absence of making such a statement in the plaint would have its own effect. Learned counsel for the plaintiff submits that the plaintiff has made a statement in paragraph Nos.11 and 13 that considering the cause of action, the Court has the jurisdiction to entertain the suit. The plaintiff has made a statement that the suit is within limitation, considering the cause of action dated 7.11.2006.

10. It is conceded that the defendants did not specifically raise a ground in the written statement that the suit has been filed beyond limitation and hence it is untenable.

11. The plaintiff has relied upon the judgment of the Honourable Apex Court in the matter of National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad and others [AIR 2012 SC 264]. I do not find that the view expressed by the Honourable Apex Court in paragraph No.29, with reference to Order VIII Rule 2 of the CPC would support the contention of the petitioner. The case put up in National Textile (*supra*) was that no averment was made by the defendant that the suit was bad for non-joinder of parties. A vague plea was put forth and the Honourable Apex Court has concluded that such a vague plea did not meet the requirement of Order VIII Rule 2 of the CPC.

12. In my view, when the trial Court, after recording of the oral evidence was over, was going through the record of the case, it felt that the issue of limitation should have been framed. The plaintiff has contended that the suit is within limitation. If the issue, whether the suit was within limitation is left out and if it is finally concluded while delivering the judgment that the suit was beyond limitation,

the trial Court could very well refuse to exercise its jurisdiction. In this probable situation the trial Court has pragmatically framed the issue of limitation. Such pragmatism shown by the trial Court cannot be branded as being perverse or erroneous.

13. This petition being devoid of merit is, therefore, dismissed. Rule is discharged.

14. Needless to state, since, it appears that the issue of limitation is a mixed question of facts and law, the litigating sides would be at liberty to lead evidence, if so advised, and it is expected that none of the litigating sides would resort to seeking unnecessary adjournments.

(RAVINDRA V. GHUGE, J.)

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