

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1503 OF 2015

Rajabhau Digambar Jabde,
Through G.P.A., Ankush Rajabhau Jabde .. **Petitioner**

Versus

Rahul Arunrao Tak and others .. **Respondents**

Shri Shambhuraje V. Deshmukh, Advocate for the Petitioner.
Shri Rajendra S. Deshmukh, Advocate for Respondent No. 3.

WITH
WRIT PETITION NO. 8229 OF 2015

The Vaidyanath Urban Cooperative Bank Ltd.,
Through Assistant Chief General manager
and Authorized Officer,
Nitin Madhukar Chitale .. **Petitioner**

Versus

Rajabhau Digambarrao Jabde,
Through G.P.A., Ankush Rajabhau Jabde
and others .. **Respondents**

Shri Rajendra S. Deshmukh, Advocate for the Petitioner.
Shri Shambhuraje V. Deshmukh, Advocate for Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th December, 2017

PER COURT :

1. The petitioner in Writ Petition No. 1503 of 2015 has filed a civil suit against the present respondents for the relief of declaration of ownership and injunction. The petitioner in Writ Petition No. 8229 of 2015 filed an application for rejection of plaint on the grounds of limitation, valuation and jurisdiction. The Bank sought rejection of plaint on the ground that suit is barred by limitation, valuation is improperly made and that court does not have jurisdiction in view of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter refers to as 'SARFAESI Act'). The application is partly allowed to the effect that the court directed framing of preliminary issue with regard to valuation and limitation however did not frame any issue with regard to jurisdiction.

2. Mr. S. V. Deshmukh, learned advocate for the petitioner in Writ Petition No. 1503 of 2015 submits that the plaintiff in the plaint has very categorically and in detail explained as to how the suit is within limitation. The valuation is also properly

made. There was no propriety in framing the issue for limitation and valuation as preliminary issue. The issue of limitation is issue involving mixed question of law and fact, the same cannot be tried as preliminary issue. As per Order 14 Rule 2 of the C.P.C., issue of limitation has to be decided alongwith other issues. The learned advocate submits that the plaintiff has sought relief only in respect of his house property and has not sought relief regarding mortgage, as such court has rightly refused to frame issue of jurisdiction as preliminary issue.

3. Mr. Joshi, learned advocate for the Bank submits that the issue of limitation has to be tried as preliminary issue under Section 9A of the C.P.C. Issue that goes to the root of jurisdiction would come within the ambit of Section 9A of C.P.C. As per the pleadings of the plaintiff, the relief is being claimed in respect of the property which is also part of the mortgage deed. As such issue in view of Section 34 of the 'SARFAESI Act' would be relevant.

4. The Apex Court in a case of **Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai and others**

reported in **(2015) 6 SCC 412** has held that issue of limitation goes to the root of jurisdiction and as such has to be decided as the preliminary issue under Section 9A of the C.P.C. At the time of framing the issue the court need not go into the factual merits. It is after the parties adduce their evidence on the preliminary issue the court would decide the preliminary issue by considering the evidence adduced before it.

5. The plaintiff has pleaded in the plaint that in the mortgage deed wrongly the part of the plaintiff's property is also included. The Bank is claiming its right on the basis of mortgage deed and invoking the provision of Section 13 (4) of the 'SARFAESI Act'.

6. In view of above, the order of the court in framing the preliminary issue of limitation and valuation appears to be just and proper. The court also ought to have framed the issue on jurisdiction qua the provisions of the 'SARFAESI Act' as the same would be required to be framed under Section 9A of C.P.C. The plaintiff filed an application for temporary injunction. The preliminary issues are required to be decided alongwith the said application.

7. In the result, I pass the following order.

ORDER

I] The Writ Petition No. 1503 of 2015 is dismissed.

II] The Writ Petition No. 8229 of 2015 is allowed to the extent the trial court shall frame the issue of jurisdiction qua the provisions of 'SARFAESI Act' as preliminary issue.

III] The court shall give opportunity to the parties to adduce evidence on the preliminary issue and then decide the same.

8. The writ petition is accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]