

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9742 OF 2017

SAGAR LAXMAN SHINDE
VERSUS
RAJENDRA PRABHAKAR PAKHARE AND OTHERS

Advocate for Petitioner : Shri S.S. Deshmukh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 07th August, 2017

PER COURT :

1. The petitioner is aggrieved by the order dated 16/01/2017, passed by the Trial Court, by which, application Exhibit 15 has been rejected only to the extent of not taking up the issue of limitation as a preliminary issue.

2. Shri Deshmukh, learned advocate for the petitioner who is original defendant No. 2, has strenuously criticized the impugned order. Contention is that a declaration is sought with regard to the sale deed bearing registration No. 1363/2006, dated 26/06/2006, and hence the suit filed by the plaintiff seeking recovery of possession, injunction and declaration that

the sale deed is not binding upon him, is rendered time barred.

When the challenge to the sale deed is time barred, the suit should have been dismissed pre-emptorily and for the said purpose, the said issue should have been tried as a preliminary issue.

3. Despite the strenuous submissions of Shri Deshmukh, I do not find that the impugned order could be termed as perverse or erroneous. Merely because a second view is possible, it would not call for an interference by this Court in its supervisory jurisdiction. The Trial Court has recorded that the issue of limitation is based on the pleadings of the parties and a mixed question of various facts and law. The Trial Court, has therefore, framed the issue with regard to the limitation and has proceeded to consider the said issue along with other issues.

4. Keeping in view, the law laid down by the Hon'ble Apex Court in the matters of Syed Yakoob Versus K.S. Radhakrishnan and others (AIR 1964 SC 477) and Surya Dev. Rai Versus Ram Chander Rai and others [(2003) 6 SCC 682], I

do not find that gross injustice is likely to be caused to the petitioner. This petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.