

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

Writ Petition No. 3085 of 2013

- 1) Dnyanoba s/o Shyamrao Gavli,
Age 55 years,
Occupation : Agriculture.
- 2) Anerao s/o Dnyanoba Gavli,
Age 36 years,
Occupation : Agriculture
Both R/o Zari,
Taluka and District Parbhani. **.. Petitioners.**

Versus

- * Sudam s/o Shyamrao Gavli,
Age 64 years,
Occupation : Agriculture,
R/o Zari,
Taluka and District Parbhani. **.. Respondent.**

Shri. Shrikishan S. Shinde, Advocate, for petitioners.

Shri. Sanket S. Kulkarni, Advocate, for respondent.

Coram: T.V. NALAWADE, J.

Date: 7 July 2017.

ORAL JUDGMENT :

- 1) Rule, rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The petition is filed by the defendants of Regular Civil Suit No.104/2010 presently pending before the Court of the Civil Judge, Senior Division, Parbhani for the relief of declaration in respect of agricultural land. In the suit at Exhibit 29 application was moved by the present petitioners, defendants for framing of issue of limitation. This application is rejected by the trial Court.

3) This Court has carefully gone through the pleadings. The plaintiff is claiming his right as successor of Shyamrao and the defendants are claiming right not only as successor of Shyamrao but under sale deed executed by Shyamrao on 4-6-1982. Declaration is claimed by the plaintiff that he is owner at least of half portion of the suit property. Certificate of sale was issued under tenancy law in favour of Shyamrao prior to 1982. In view of these circumstances, separate declaration of ownership of one-half portion is not possible and the declaration in respect of sale deed dated 4-6-1982 also needs to be claimed. If it is not claimed the trial Court will have to consider this circumstance before considering the relief of declaration of ownership claimed by the plaintiff. In view

of these circumstances, this Court holds that issue of limitation is necessary issue in the present matter.

4) In the result, the petition is allowed. The order made by the trial Court on Exhibit 29 is quashed and set aside and the application at Exhibit 29 is allowed. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

rsl