

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

WRIT PETITION NO. 10805 OF 2017

GOPIRAJ KHEMAJI MORE AND OTHERS
VERSUS
IZAJODDIN SARFARAJODDIN INAMDAR AND OTHERS

Advocate for Petitioners : Shri Arvind Deshmukh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 12th September, 2017

PER COURT :

1. The petitioners are aggrieved by the order dated 02/08/2017 passed by the Trial Court, by which, application Exhibit 110 filed by defendant Nos. 1 to 13 praying for deciding the issue of jurisdiction as a preliminary issue, has been rejected.

2. Learned counsel for the petitioners has strenuously criticized the impugned order. He has canvassed at length and has drawn my attention to the nine grounds formulated by him in the memo of the petition. He has also drawn my attention to Order VII Rule 11 and Order XIV Rule 2 of the Code of Civil Procedure to contend that if the suit *prima facie*, appears to be untenable and the Trial Court lacks jurisdiction, either the suit can be rejected under Order VII Rule 11 or the issue of jurisdiction can be decided as a preliminary under Order XIV Rule 2.

3. I find that the issues have been cast by the Trial Court on 12/08/2013. Exhibit 110 has been filed on 21/07/2017 after about four years and more so after the recording of evidence in the matter has already commenced. An affidavit in lieu of examination-in-chief has been filed by the plaintiff at Exhibit 108.

4. I also find that the Trial Court has framed issue No. 2 with regard to whether it has jurisdiction to entertain and try the suit. Needless to state, the issues are cast on the basis of the pleadings of the parties and the documents and material available at the stage of framing of the issues.

5. Considering the above and since the recording of oral evidence has already commenced and as the petitioners have belatedly put forth a prayer that the jurisdiction issue be decided peremptorily, I do not find that the impugned order passed by the Trial Court can be termed as being perverse or erroneous or likely to cause grave injustice to the petitioner.

6. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)