

(1)

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

WRIT PETITION NO.10468 OF 2016

1. Sau. Sangita Sunil Agrawal,
Age : Major, Occ. Household,
2. Sau. Sunita Anil Agrawal,
Age : Major, Occ. Household

Both R/o Balaji galli, Sarafa Bazaar,
Bhusaval, Dist. Jalgaon

..PETITIONERS
(Ori. Deft. No.1 & 2)

VERSUS

Smt. Lilabai Deviprasad Agrawal,
Age : 65 yrs., Occ. Household,
R/o Old Satara, Mamaji Talkies Road,
Mittal Niwas, Bhusaval

..RESPONDENT
(Ori. Plaintiff)

Mr Ruchir Wani, Advocate holding for Mr A.S. Bajaj, Advocate for
petitioners;
Mr P.B. Gamot, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 5th October, 2017

ORAL ORDER:

Heard learned Counsel for the parties.

2. Application Exh. 26 came to be moved by petitioners-defendants in
Regular Civil Suit No.78 of 2011 with a prayer for deciding issue no.6 in
regard to *res judicata* and issue no.8 as regards limitation, as preliminary
issues.

(2)

3. The aforesaid application came to be decided on 12th September, 2013, wherein the Trial Court ordered that issue no.6 be tried as a preliminary issue and as such, refrained from deciding the issue of limitation as a preliminary issue.

4. The Trial Court re-considered said application Exh.26 and passed a contrary order to that of order dated 12th September, 2013, directing that issues of limitation and *res judicata* would be decided along with other issues. Thus, the Trial Court rejected application Exh.26.

5. It is not in dispute that the order impugned and order dated 12th September, 2013 are passed below Exh.26. Once application Exh.26 was decided by order dated 12th September, 2013, there was no occasion for the learned Trial Judge to re-open the same and pass a contradictory order, which is impugned in the present petition.

6. In view thereof, in my opinion, writ petition needs to be allowed. Application Exh.26 is termed to be decided in terms of order dated 12th September, 2013 and the impugned order dated 28th July, 2016 accordingly stands set aside.

With above observations, writ petition stands partly allowed.

(NITIN W. SAMBRE, J.)

amj