

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

WRIT PETITION NO. 75 OF 2016

Motilal Khiwraj Banthia

.. Petitioner

Versus

Mahendra Madanlal Bamb and others .. Respondents

Shri Shivraj B. Kadu, Advocate for the Petitioner.

Ms. Monali Patil, Advocate h/f Shri Sanket S. Kulkarni, Advocate
for the Respondent No. 1.

CORAM : S. V. GANGAPURWALA , J.

DATE : 21ST APRIL, 2017.

PER COURT :

. Mr. Kadu, the learned counsel for the petitioner submits that, the suit filed by the plaintiff for recovery in the Court of Civil Judge, Kopergaon is not maintainable. The Civil Court at Kopergaon does not have territorial jurisdiction to decide the said suit. All the transactions have taken place within the jurisdiction of Panvel. No part cause of action arouse within the territorial jurisdiction of Court at Kopergaon. The issue No. 5 is framed to the effect that, whether the Court has jurisdiction. The said issue needs to be decided as preliminary issue. Sec. 9-A of the Code of Civil Procedure mandates framing of preliminary issue of jurisdiction.

2. In the present matter, the plaintiff does not appear to have filed any application for injunction or for any other interim order. All issues are framed in the year 2012. Issue No. 5 pertains to the jurisdiction of the Court. A party will be required to adduce the evidence with regard to the cause of action. When all the issues are framed, it would be expedient to decide all the issues together. The Court below has observed that, earlier also the defendants had filed application below Exhibit 31 for framing issue of jurisdiction as preliminary issue. The said application is rejected. The order on the said application has become final and again instant application has been filed. The same is not tenable.

3. The petitioner will have every opportunity to adduce evidence with regard to cause of action and jurisdiction when the said issue is being decided along all other issues.

4. In the light of the above, the writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]