

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6302 OF 2017

Lakshmikant Sharadchandra Pownikar .. Petitioners
& Anr.

v/s.

Shriniwas Sharad alias Sharadchandra
Pownikar & Anr. .. Respondents

Mr. Rahul Motkari for the petitioners
Mr. Nagesh N. Marathe a/w Mr. Vishal Lokhande i/b Mandar Soman
for the respondents

**CORAM : M.S. SANKLECHA, J.
DATED : 4th SEPTEMBER, 2017**

P.C.

1. This petition is moved for urgent reliefs.
2. This petition under Article 227 of the Constitution of India challenges the order dated 16th March, 2017 passed by the Joint Civil Judge, Senior Division, Pune. The impugned order has partially allowed the respondents' application by framing a preliminary issue for consideration formulated as “whether the suit is within limitation?” before deciding the interim applications taken out by the plaintiff for injunction in a plaint filed for a declaration and exclusive

ownership of the suit property.

3. In the pending suit, the petitioners had taken out an application for injunction and interim relief before the trial Court. In response, the respondents herein filed an application, dated 9th November, 2016 for rejection of the plaint under Order 7 Rule 11(a) and 11(d) of the Civil Procedure Code (Code). Alternatively, in its application dated 9th November, 2016, the respondents herein sought framing of preliminary issue under Section 9A of the Code. The impugned order while rejecting the respondents application under Order 7 Rule 11(a) of the Code has directed that the issue of limitation as framed hereinabove be tried as preliminary issue. An application and order therein under Section 9A of the Code would in the present facts is applicable as the petitioners had taken out interim application seeking interim reliefs, which is awaiting disposal. The view taken by the impugned order is a possible view and at this stage no prejudice is caused to the petitioners as the contention of the petitioners that the plaint was not barred by limitation, would be the subject matter of consideration by the trial Court, while deciding the preliminary issue.

4. The impugned order cannot be said to be without jurisdiction and / or without authority of law so as to justify the exercise of my supervisory jurisdiction under Article 227 of the Constitution of India.

5. In the above view, the petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)