

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

WRIT PETITION NO.8443 OF 2016

Data Bank Office Staples (India) Pvt. Ltd.	..	Petitioner
Vs.		
Asha Dattatray Chitre & Ors.	..	Respondents

Mr.Ashish Ghataghat a/w Mr.Prakash Kadama i/by M/s.Vidhi Partners
for the petitioner.

Ms.Dhanali Kubal for the respondent nos.1 and 2.

CORAM : R.D. DHANUKA, J.

DATE : 6th November 2017

P.C.:

. Rule, returnable forthwith. Learned counsel for the respondent nos.1 and 2 waives service. The petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 8th February 2016 framing only one issue under Order VII Rule 11(a) of the Civil Procedure Code, 1908 (CPC) as to whether the suit discloses any cause of action and did not frame issue of limitation invoking Order VII Rule 11 of the CPC and issue of jurisdiction though raised by the petitioner in the application dated 28th April 2014 filed before the learned Trial Judge.

3. Learned counsel appearing for the respondent nos.1 and 2 opposes this petition on the ground that the issue of limitation raised by the petitioner is a mixed question of fact and law and shall be raised along with other issues.

4. In my view, the issue of jurisdiction, limitation and that the suit did not disclose any cause of action ought to have been framed as preliminary issues by the learned Trial Judge. The said order shows perversity and thus deserves to be set aside.

5. A perusal of the application dated 28th April 2014 indicates that the petitioner had also raised an issue of jurisdiction in the said application on the ground that the suit was barred by the provisions of the Bombay Land Revenue Code, 1879, the Maharashtra Land Revenue Code, 1966 and the Specific Relief Act, 1963 in addition to the issue of limitation. Both the issues however, were not framed by the learned Trial Judge.

6. I therefore pass the following order :-

(i) The impugned order dated 8th February 2016 passed by the learned Trial Judge is set aside;

(ii) Following issues are framed :-

(a) Whether the plaint discloses any cause of action ?

(b) Whether the suit is barred by the provisions of the Bombay Land Revenue Code, 1879, the Maharashtra Land Revenue Code, 1966 and the Specific Relief Act, 1963 ?

(c) Whether the suit is barred by the provisions of Law of Limitation and also under the provisions of Sections 79 and 80 of the CPC?

7. Rule is made absolute in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.