

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

WRIT PETITION NO.8002 OF 2017

Shri Surendra Shashikumar Shete

...Petitioner

Versus

Sou.Radha @ Indu Gajanan Lohar & Ors.

...Respondents

Mr.Dilip Bodake for the Petitioner.

.....

.....

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 27, 2017

P.C. :

1. Not on board. Upon mentioning, taken on board.
2. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
3. This petition is directed against the order dated 10.03.2017 passed by the learned Civil Judge, Junior Division, Atpadi, District – Sangli below Exhibit 108 in Regular Civil Suit No. 97 of 2004.
4. The learned counsel for the petitioner has submitted that the Suit is filed for partition, separate possession and also for preemption of the suit premises. He argued that for preemption under Article 97 of the Limitation Act, time is only of one year. However, the petitioner, who is

original defendant no. 10, has raised the issue by filing the application below Exhibit 108 that before filing the Suit, the plaintiffs were not in possession of the suit property for more than 12 years and therefore, the plaintiffs suit deserves to be rejected with cost. He has further submitted that the issue of limitation and also the issue of preemption of the Suit is not maintainable. However, the learned Judge has erroneously rejected the said application. The learned Judge ought to have considered the written statement. In the written statement, defendant no.10 has taken a stand that the issues can be added and deleted at any stage of the trial Court.

5. Perused the order dated 10.03.2017 passed by the learned Judge. The suit is filed for partition and preemption, where the plaintiffs claimed that cause of action arose on 23.08.2004 when the defendants-co-sharers have refused to gave their shares and also denied their rights by way of preemption. Thereafter, the Suit was filed in September 2004 and hence, the Suit is within limitation. The reasons given by the learned Judge in the order dated 10.03.2017 cannot be faulted with. Hence, the said order is hereby confirmed.

6. Writ petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)