

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.544 OF 2016**

Shrimant Chhatrapati Udayanraje
Pratapsingh Maharaj Bhonsle and
Ors.

..Applicants

Vs

Shrimant Chhatrapati Vijaysinhraje
Shahumaharaj Bhonsle and Ors.

.. Respondents

Mr. V.S.Kapse i/b Mr.S.D.Chavan, Advocate for Applicants.
Mr. Vishwanath S. Talkute, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 23/01/2017

PC:

1. Heard Mr. V.S.Kapse, learned counsel for the applicants and Mr.V.S.Talkute, learned counsel for respondent no.1 at length.
2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C. '), the applicants, hereinafter referred to defendants no.1 and 2', have challenged the Judgment and order dated 4.6.2016 passed by the learned 3rd Jt. Civil Judge, Senior Division, Satara below Exhibit 2487 in Spl.Civil Suit No. 16 of 2003 By that order, the learned trial Judge held that the suit is not barred by limitation.
3. In support of this Application, Mr Kapse submitted that in the plaint and in particular paragraph 8, the plaintiff has challenged sale deeds of the year 1988, 26.10.1991, 10.2.1994 and 3.7.2000. The suit is instituted on or about 20.1.2003. At the highest, challenge to the sale deed of 3.7.2000 could be said

to be within limitation. In other words, he submitted that challenge to the sale deeds of 1988, 26.10.1991 and 10.2.1994 is clearly barred by limitation.

4. Mr. Kapse further submitted that partition was effected and the Memorandum of Partition (MOP) was prepared on 26.10.1970. The said MOP bears the signature of the plaintiff. He invited my attention to prayer clause (a) and submitted that as MOP dated 26.10.1970 bears signature of the plaintiff, the plaintiff is not entitled to declaration in terms of prayer clause (a). As far as prayer clause (b) is concerned, the challenge to the sale deeds of 1988, 26.10.1991, and 10.2.1994 is clearly barred by limitation. He submitted that though various documents were replied in support of this contention, the learned trial Judge did not advert to these documents. He further submitted that on behalf of the plaintiff, notice was published in Daily Ekyā on 16.6.1985. Copy of that notice was sent to the defendants on 11.6.1985. In that notice, the plaintiff claimed that suit premises are ancestral and joint family properties. That notice was replied by the defendants on 20.6.1985 and the reply was also published in Daily Sakal Edition dated 26.6.1985. In that reply, defendant no.1 specifically contended that he is exclusive owner of the suit properties. He, therefore, submitted that cause of action accrued to the plaintiff in the year 1985 itself for filing suit of partition and the suit is instituted in the year 2003 which is clearly barred

by limitation.

5. On the other hand, Mr. Talkute supported the impugned order. He submitted that though the defendants raised preliminary issue, they did not adduce any evidence. He submitted that the learned trial Judge held that issue of limitation is not a pure question of law in the facts and circumstances of the present case and is a mixed question of law and fact. The defendants did not adduce oral evidence to prove that the suit is barred by limitation. He further relied upon the order dated 27.4.2015 passed by this Court in C.R.A. No.51 of 2005 to contend that the contention that the suit is barred by limitation is barred by constructive res judicata.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, in paragraphs 10 and 19 of the written statement, the defendants have contended that suit is barred by limitation. The learned trial Judge framed preliminary issue as to as to whether suit is barred by limitation. It is however material to note that both the parties filed purshis to the effect that they do not want to lead oral evidence and the documents on record will determine the issue of limitation. The learned trial Judge held that issue of limitation is a mixed question of law and fact and the defendants did not adduce any evidence. Suit is instituted on 20.1.2003 challenging the sale

deeds of 1988, 26.10.1991, 10.2.1994 and 3.7.2000. The learned trial Judge has referred to Article 58 of the Limitation Act which prescribes three years period of limitation for filing suit for obtaining any declaration when the right to sue first accrues. The plaintiffs have denied that by virtue of MOP of 26.10.1970 partition had already been effected in the family. The learned trial Judge also observed that the documents produced by the defendants are not sufficient for determining the issue of limitation. The learned trial Judge accordingly rejected the application.

7. Mr. Talkute relied upon the order dated 27.4.2015 passed by this Court in C.R.A. No.51 of 2005. Perusal of that order shows that the contention advanced before this Court related to the issue of jurisdiction.

8. For the reasons recorded in paragraph 5 of the impugned order, I do not find that the learned trial Judge has committed any error. In view thereof, no case is made out for invocation of powers under Article 227 of the constitution of India. Application fails and the same is dismissed. While framing the issues, the learned trial Judge will frame issue of limitation as one of the issues and shall try this issue along with other issues. Order accordingly.

(R.G.KETKAR, J.)