

Anand

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

WRIT PETITION NO.11126 OF 2016

Jarnail Singh Chanan Singh & anr. .Petitioners

Vs.

Smt. Lethi Gragory Lobo & anr. .Respondents

Mr.R.N.Jawal, Advocate, for the Petitioners

CORAM : R.G.KETKAR, J.

DATE : 17.03.2017

P.C.

. Heard Mr. Jawal, learned counsel for the Petitioners at length.

2. By this Petition under Article 227 of the constitution of India, the Petitioners, hereinafter referred to as 'Defendant Nos.1 & 2' have challenged the Judgment and Order dated 07.06.2016 passed by the learned 4th Jt.C.J.S.D., Thane below Exh.19 in Spl.C.S.No.472 of 2015. By that order, the learned trial Judge rejected the Application made by the Defendant for framing preliminary issue Under Section 9-A of the Code of Civil Procedure, 1908 (For short "CPC").

3. In support of this Petition, Mr. Jawal submitted that the Plaintiff has challenged the Agreement of Sale dated 05.11.2011 entered into by and between Defendant No.1 as constituted Power of Attorney of the Plaintiff and Defendant No.2 in respect of the suit property. Unless this prayer is granted, Plaintiff will not get any other relief. Insofar as challenge to the Agreement of Sale dated 05.11.2011 is concerned, on the face of it, it is barred by limitation. The suit is instituted in the year 2016. As the suit is not instituted within three years from the date of Agreement of Sale, the suit is barred by limitation. The learned trial Judge was, therefore, not justified in rejecting the Application.

4. I have considered submissions advanced by Mr.Jawal. I have also perused the material on record.

5. A perusal of the plaint and in particular, prayers shows that Plaintiff has sought declaration that he is legal and lawful owner of the suit property and for recovery of possession of the suit property & damages. The learned trial Judge while rejecting the Application observed that the main relief sought by the Plaintiff against Defendant No.3 is possession of the suit property from him. The period of

limitation prescribed for recovery of possession is 12 years. The suit cannot be said to be barred by limitation.

6. In view thereof, I do not find that the learned trial Judge has committed any error while rejecting the Application. Hence, Petition fails and same is dismissed. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)