

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

**APPEAL FROM ORDER NO.1163 OF 2014
WITH
CIVIL APPLICATION NO.1403 OF 2014**

Mrs. Kalavati Rajaram Singh And Another ... Appellant/Applicant
Versus

Mrs. Asha Ravindra Singh And Others ... Respondents

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Mr.K.N. Kandekar for the Applicant/Applicant.

Mr. J.S. Yadav i/b B.P. Shukla for Respondent Nos.1, 2 and 5.

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CORAM : S.C. GUPTE, J.

DATE : 27 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 Appeal from Order is admitted and by consent of learned Counsel for both parties, taken up for hearing forthwith.

3 Respondent No.1 (original Plaintiff) has filed the present suit against the Respondent Nos.2 to 7 for a declaration that she has 1/9th share in the suit shop and separate possession of her share. The Plaintiff had taken out Notice of Motion No.1285 of 2013 for interim reliefs against Defendant Nos.1 and 6 to 8 against creation of third party rights and for appointment of a court receiver. Defendant No.1 raised objection to the jurisdiction of the City Civil Court at Bombay to decide the suit. On her application, namely, Notice of Motion No.2714 of 2013, objecting to the jurisdiction of

the Court and for framing of preliminary issues, two preliminary issues were framed by the Court. The first related to the pecuniary jurisdiction of the Court to entertain and try the suit and the second related to the bar of limitation.

4 The Trial Court decided both issues against the Defendants and in favour of the Plaintiff. Defendant No.1 has come in appeal from that order. Considering the valuation of the property made by Defendant No.1 herself, it may be seen that the suit lies within the pecuniary jurisdiction of the City Civil Court at Bombay and accordingly, there is nothing wrong with the impugned order, insofar as the issue of pecuniary jurisdiction is concerned. As for the issue of limitation, the Trial Court proceeded to hold that the plea of limitation raised in the present case was a mixed question of facts and law and the same could not be decided at the interlocutory stage and yet, the issue appears to have been decided against the Defendants, holding that the Defendants did not prove that the suit was barred by the law of limitation. As a matter of fact, whenever a preliminary issue of jurisdiction is raised under Section 9A of the Civil Procedure Code, 1908 ("Code"), and if the Court finds the issue to be either an issue of facts or a mixed question of facts and law, the Court has to proceed to record evidence and then, after hearing the parties, determine the issue. The Court cannot refuse to decide the issue on the ground that it is a mixed question of facts and law. Such preliminary issue under 9A of the Code has to be decided at the very outset, before any interlocutory relief is finally granted on the plaintiff's Notice of Motion.

5 In the premises, the impugned order cannot be sustained. Appeal
from Order is, accordingly, allowed by setting aside the impugned order,
insofar as it rejects the Defendants' objection to the jurisdiction on the
ground of bar of limitation.

6 Notice of Motion No.2714 of 2013 alongwith Suit No.1214 of 2013 is
remanded to the City Civil Court at Bombay for a fresh decision on the
issue of limitation framed as Preliminary Issue-(b) in paragraph-7 of the
impugned order dated 7 October 2014, in accordance with law.

7 The City Civil Court at Bombay shall permit the parties to lead such
evidence as they desire on this preliminary issue and thereafter decide the
same before passing any final order on Notice of Motion No.1285 of 2013.

8 In view of the disposal of the Appeal from Order, Civil Application
No.1403 of 2014 does not survive and the same is also disposed of.

(S.C. GUPTE, J.)