

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12172 OF 2018
(Giriraj Mohan Yadav and others Vs. Laxman Keshav Shide and
others)

Mr.V.S.Undre, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/10/2018

PER COURT :

1. The petitioners / original defendants are aggrieved by the order dated 17/08/2018 by which the Trial Court has rejected application Exh.59 filed by these petitioners wherein they had prayed for deciding issue No.10 as a preliminary issue.

2. Learned Advocate for the petitioners has vehemently criticized the impugned order and he draws my attention to the 8 grounds formulated in the memo of the petition. Contention is that the suit is barred on account of limitation since a delay of 36 years has been caused in challenging the sale deed.

3. I find that the suit was lodged in 2013. Her written statement was filed on 20/07/2013. Issues were cast on 21/01/2015 and issue No.10 reads as under :-

“10. Whether the suit is barred of law of limitation ?” (*reproduced verbatim*)

4. Exhibit 59 was filed on 09/02/2018 when the stage in the suit was for cross examination of the plaintiff. The Trial Court concluded that such an objection under Order XIV Rule 2 of the CPC was squarely covered by the judgment of the Hon'ble Apex Court in the matter of Foreshore Cooperative Housing Society Limited Vs. Praveen D.Desai (Dead), through legal heirs and others, [(2015) 6 SCC 412] and the question of limitation being a mixed question of law and facts, will have to be considered after recording of oral evidence.

5. Considering the above and the view taken by the Hon'ble Apex Court in Foreshore judgment (supra), I find that the Trial Court has rightly declined to exercise its discretion and since the recording of oral evidence has already commenced, the impugned order does not deserve to be branded as being perverse or erroneous.

6. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)