

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1487 OF 2018

BHAGWAT DHONDIRAM KODARE AND OTHERS
VERSUS
SUDHABAI PRALHAD SALUNKE AND OTHERS

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Advocate for Petitioners : Shri C R Deshpande

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 07, 2018

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PER COURT :-

1. The petitioners / defendants 3 to 5 are aggrieved by the order dated 14.7.2017, delivered by the trial Court, rejecting Exhibit 55, which is an application moved by these petitioners under Section 9A of the CPC praying for framing of an issue and a decision thereon, which has been delivered in the negative and the suit has been held to be maintainable on the basis of the law of limitation.

2. The grievance of the petitioners is that the procedure followed by the trial Court in deciding the preliminary issue is against order XIV Rule 2 of the CPC. Contention is that under Order XIV Rule 2 of the CPC, the Court can pronounce a judgment on all issues as well as the case can be disposed off on the preliminary issues. When the preliminary issue has been cast as the first issue to

be decided, the trial Court has closed the issue of maintainability on limitation by delivering the impugned order. Either the said issue has to be kept open to be considered by the trial Court along with the final issues or the trial Court can proceed to decide the suit on the rest of the issues and can reconsider the issue of limitation while deciding the suit finally.

3. Notwithstanding the strenuous submissions of the learned counsel for the petitioners, I find that it were these defendants who had sought framing of a preliminary issue under Section 9A (Maharashtra Amendment), which reads as under:-

"9A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.-

(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any

such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of suit.

(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction".

4. Considering the abovesaid provision, the trial Court can proceed to frame an issue and determine the said issue before granting or setting aside any order on interim relief. Any such application can be heard and disposed off by the Court expeditiously and it need not adjourn the case for the said purpose.

5. The impugned order reveals that the following two issues were framed by the trial Court on the request of these defendants:-

"(1) Whether the suit is barred by the provisions of the Limitation Act?

(2) What order? "

6. The litigating sides were permitted to lead evidence on the said issue, which they have so done. After the recording of evidence

on the preliminary issue was closed, the trial Court considered the submissions of the litigating sides and concluded that the suit was well within limitation keeping in view Article 59 of the Limitation Act.

7. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Prem Singh Vs. Birbal and others [AIR 2006 SC 3608], to support the contention that the remedy available to the plaintiff is extinguished under Section 27 of the Limitation Act.

8. I find that the defendants' endeavour is to prolong the suit, which is lodged in 2012 and is about six years' of age. It would be unfair to the plaintiff by entertaining a petition on orders passed by the trial Court at various stages and more so when the preliminary issue framed at the behest of these defendants, has been decided on its merits after recording of evidence. In my view, ends of justice would be met by directing the trial Court to decide the remaining issues in the suit expeditiously and by keeping the liberty of raising a comprehensive challenge as against the judgment of the trial Court in the event the grievance of these defendants subsists, open.

9. Considering the above this petition is not being entertained and stands dismissed. The trial Court would decide RCS No.828 of

2012 expeditiously and preferably before the end of February 2019. Needless to state, in the event these defendants suffer an adverse order on the other issues, they would be at liberty to raise a comprehensive challenge to the judgment and decree inclusive of a challenge to the impugned order.

(RAVINDRA V. GHUGE, J.)

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