

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11293 OF 2015

**PANDITRAO TRIMBAK PATIL
VERSUS
NARAYAN RAOJI PATIL DIED THROUGH LRS RUKHMABAI
NARAYAN PATIL AND OTHERS**

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Advocate for the Petitioner : Shri A. S. Sawant
Advocate for Respondent Nos.1A to 1H : Shri B. R. Warma

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th NOVEMBER, 2018.

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PER COURT :

1. I have heard the learned Advocates for the respective sides at length.

2. With their assistance, I have gone through the record available in relation to RCS No. 98/1997 pertaining to Gat No. 71 admeasuring 70 R. and RCS No. 32/2010 with reference to the same Gat No. 71 admeasuring 70 R. The petitioner, in this petition is the GPA holder of the defendant in RCS No. 98/1997 which was filed by the deceased respondent. Similarly, the petitioner is the plaintiff in RCS No. 32/2010 and the deceased respondent was the defendant in the said

suit. The said deceased Narayan is now represented by his L.Rs.

3. I find that in the first suit, the L.Rs. of Narayan sought recovery of encroached portion to the extent of 70 R. in Gat No. 71. In the second suit, the petitioner plaintiff has sought a declaration of ownership on the same portion admeasuring 70 R. in Gat No.71.

4. The situation, therefore, is that in the earlier suit, L.Rs. of Narayan are seeking clear possession of the same suit land with regard to which the present petitioner is seeking a declaration of ownership in the second suit.

5. In order to avoid contradictory judgments, it would be appropriate to club both the suits, but by keeping the issue of limitation open in the second suit as the learned Advocate appearing on behalf of the L.Rs. of Narayan, submits that this petitioner's second suit is barred by limitation. The learned Advocates for the respective sides are agreeable.

6. In view of the above, this petition is disposed off with a direction to the Trial Court that RCS No. 98/1997 and RCS No. 32/2010 shall be clubbed. However, the issue as regards limitation shall be framed in the second suit. Though the parties are at liberty to lead common evidence, they are at liberty to lead additional evidence to the extent of the issue of limitation applicable in the second suit. While deciding both the suits together, the Trial Court would decide as to whether the second suit is barred by limitation.

7. Needless to state, as the first suit is pending for more than 21 years, the Trial Court shall decide both the suits together as expeditiously as possible and in any case, on or before 30/09/2019.

(RAVINDRA V. GHUGE, J.)

shp/-