

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

927. WRIT PETITION No. 13466 OF 2018

Sumanbai Totaram Thakur

... Petitioner

Versus

Ganpat Pandurang Thakur and others

... Respondents

Mr. M.R. Bhokarika, Advocate for petitioner.

Coram : N.M. Jamdar, J.

Date : 5 December 2018.

ORAL ORDER:

1. By this petition, the petitioner has challenged the order passed by the learned Civil Judge (Junior Division), Muktainagar District Jalgaon, rejecting application Exhibit No. 68 for framing certain issues in Regular Civil Suit No. 59 of 2014 dated 1 October 2018.

2. Apart from the fact that the application is moved at the time of hearing of the suit, the issues sought to be framed are, whether the plaintiffs prove that they have right to demand partition and secondly, whether the suit is within limitation. Merely because these

issues are not framed, does not mean that the petitioner is precluded from arguing her case, as may be available in law and facts, as pleaded. The issue of limitation is something. The learned Judge will have to decide it in view of the provisions of Section 2 of the Limitation Act. In fact, the issue No.2 which is already framed, refers to the right of the plaintiffs to demand partition. Considering this position with all contentions of the petitioners are open at the time of hearing, no prejudice is caused to the petitioner.

3. The writ petition is accordingly disposed of.

N.M. Jamdar, J.