

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4100 OF 2017

Abdul Hafiz Abdul Karim Shaikh & Ors.	 Petitioners
V/s.	
Salaam Abdul Karim Shaikh & Ors.	 Respondents

Mr. R.M. Nakhawa, i/by Mr. Vasant D. Dhavan, for the Petitioners.

Mr. Mujib M. Khan for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Nakhawa, learned counsel for the Petitioners, and Mr. Khan, learned counsel for the Respondents.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 20th January 2017 passed by the City Civil Court, Greater Bombay, in Notice of Motion No.548 of 2016 in S.C. Suit No.1337 of 2014.
3. The said Notice of Motion was taken out by the present Petitioners, who are the Defendats before the Trial Court, under Order 7 Rule 11(d) of the CPC, for rejection of the plaint; firstly, on the ground that, the City Civil Court has no jurisdiction to entertain the Suit and, secondly, on the ground that, the suit claim is time barred.

4. However the perusal of the order passed by the Trial Court shows that, the Trial Court has considered the aspect of limitation and has rightly held that, the issue of limitation being a mixed question of fact and law, it has to be decided at the time of final hearing of the Suit and on that count, at this stage, the plaint cannot be rejected.

5. As regards the issue of jurisdiction of the City Civil Court, learned counsel for the Petitioners has placed reliance on the Judgment of this Court in the case of *Anthony Fernandes and Ors. (In the matter of Heirship Certificate under Section 2 of the Bombay Regulation VIII of 1827)*, 1993 Mh.L.J. 408, to submit that, as regards the 'Heirship Certificate' to be sought under the Bombay Regulation Act, only the High Court will have the jurisdiction. However, in the present case, the Respondents-Plaintiffs have not filed any such Petition for 'Heirship Certificate', but, they have filed the Suit to get their 1/3rd share from the income of the suit premises and for injunction. Therefore, the City Civil Court alone will have the jurisdiction and hence, on this count also, I do not find any reason to interfere in the impugned order passed by the Trial Court.

6. The Writ Petition, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]