

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.1 OF 2018
IN
FIRST APPEAL NO.1046 OF 2016**

Bharat D Patil

..Petitioner

Vs.

Ramniranjan Daga & Ors.

..Respondents

**Mr. Pradeep M Patil i/b Mr. Sachin Bagal. Mr. Nilesh U Masurkar for the
Review Petitioner**

Mr. Rajesh Patil for the Respondent Nos.1 to 4

CORAM : R. M. SAVANT, J.

DATE : 25th APRIL, 2018

(IN CHAMBER AT 2.45PM.)

P.C.

1 The above Review Petition has been filed seeking review of the order dated 27-6-2016 passed in the above First Appeal. The above First Appeal was filed challenging the order dated 19-12-2015 passed by the Learned Joint Civil Judge Senior Division, Panvel by which order application Exhibit 15 filed by the Respondent No.1 for dismissal of the Suit on the ground of limitation, came to be allowed and the Suit came to be dismissed as barred by limitation. Whilst passing the said order dated 27-6-2016 this Court has referred to the facts which were involved in the adjudication of the issue of limitation. The sum and substance of the findings recorded by this Court was that the Appellant was aware of the document in question i.e. Sale Deed dated

10-7-1996 as he had adopted RTS proceedings thereafter in the year 1997 for correction of the revenue record which had been adopted on account of the entry made in favour of the Respondents herein based on the Sale Deed. It is therefore not necessary to refer to the said facts once again whilst adjudicating upon the above Review Petition.

2 The review is principally sought on the ground that the issue of limitation could not have been an issue that could have been adjudicated under Section 9A of the CPC. In support of the said contention reliance is sought to be placed on the order dated 17-8-2015 passed by the Apex Court in **Jagdish Shyamrao Thorve Vs. Mohan Sitaram Dravid & Ors**, wherein the Apex Court has referred to the issue as to whether the limitation could be an issue that could be framed under Section 9A to a Larger Bench. It is required to be noted that in the reply filed to the application made under Section 9A the objections to the maintainability of the said application under Section 9A was on the ground that the said issue could not be decided without evidence being lead. It is trite that in so far as the application under Section 9A is concerned, it is in the nature of mini trial and the parties are entitled to lead evidence but it appears that in the instant case the parties probably decided to proceed on the basis of the documents on record. The Trial Court accordingly adjudicated upon the issue of limitation on the basis of the documents on record and came to a conclusion that having regard to the challenge raised to the Sale Deed

Dated 10-7-1996, the Suit filed in the year 2014 was barred by limitation. In the above Petition also no contention was raised that the issue of limitation could not be an issue under Section 9A of the CPC. It is for the first time in the review jurisdiction that such an issue is sought to be raised. The said contention could not therefore be a circumstance or eventuality covered by Order 47 of the CPC, on the basis of which the order could be reviewed. Hence no case for review is made out, the Review Petition is accordingly dismissed.

[R.M.SAVANT, J]