

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 11307 OF 2017

Niraj Lalit Shukla

...Petitioner

Versus

Lalit Gopalal Shukla & Anr.

...Respondents

.....

Mr.Avinash Joshi i/b. Mr. Rahul Karnik for the Petitioner.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 10, 2018**

P.C. :

1. The learned counsel for the petitioner submits that notices have been given to the respondents, but they have refused to accept the same.
2. This Petition is directed against the order dated 17th June, 2017 passed by the learned 9th Jt. Civil Judge, (Senior Division), Thane thereby rejecting the application below exhibit 32 in Special Civil Suit No. 120 of 2015.
3. The respondents, who are the original plaintiffs, have filed a Special Civil Suit No. 120 of 2015 for declaration and injunction against the petitioner i.e., the defendant. The petitioner is a son of the respondents.

4. The learned Counsel for the petitioner has submitted that the petitioner has suggested additional issues including the issue of limitation. He has further submitted that the plaintiffs claim their right in the suit flat, which was purchased on 21st January, 2003 and the suit was filed in the year 2015. He has further submitted that the suit for declaration of ownership is to be filed within a period of 12 years, but it is beyond limitation. The issue of limitation is required to be framed by the trial Court, as it is contended in the written statement. The respondents were aware that the petitioner-son and respondent no.2—mother have executed an Agreement dated 21st January, 2003 in respect of the suit flat with the builder. After lapsed of more than 12 years, the plaintiffs cannot claim declaration of ownership in respect of the suit flat.

5. Heard submission. Perused impugned order. Also perused paragraph 14 of the plaint and paragraphs 2 and 22 of the written statement. In paragraph 14 of the plaint, the plaintiffs have stated that the cause of action to file the suit arose in the month of January, 2015 when the defendant through his representative wrongfully claiming the suit flat, tried to alienate the suit flat and continued thereafter. Hence, the suit was filed. In paragraph 22 of the written statement, the defendant has denied these averments. Thus, the cause of action

starts running from 2015. The learned Judge of the trial Court therefore has rightly held that the suit is within limitation. Hence, the issue of limitation is not required to be framed. The view taken by the learned Judge of the trial Court is correct. Writ Petition is disposed of.

6. It is noted that this Petition is between the father and the son. It is informed that the petitioner-son is working and staying in Dubai alongwith his family. Considering the relationship between the parties, it is suggested by this Court that the learned 9th Jt. Civil Judge, (Senior Division), Thane to refer this matter to a Mediator in the interest of parties.

(MRIDULA BHATKAR, J.)