

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**CIVIL REVISION APPLICATION No. 44 OF 2017  
WITH  
WRIT PETITION NO. 14301 OF 2016**

Mohanlal S. Khabiya (Decd)  
through LRs Smt. Ratnaprabha Mohanlal  
Khabiya & Ors.

... Applicants

Vs.

Jagannath Krishnaji Deore & Ors.

... Respondents

Mr. G.S. Godbole I/b. Mr. Rahul Kulkarni, Advocate for the applicants.  
Mr. S.S. Patwardhan I/b. Mr. S.A. Tarale, Advocate for respondent  
no. 1.

**CORAM: MRS.MRIDULA BHATKAR, J.**  
**DATE: 9<sup>th</sup> July, 2018.**

**P.C.:**

The Writ Petition is directed against the judgment and order dated 17<sup>th</sup> August, 2016 passed by the learned 9<sup>th</sup> Joint Civil Judge Senior Division, Pune below Exhibit 243 in Special Civil Suit No. 1002 of 1992.

2. The Civil Revision Application is directed against the judgment and order dated 17<sup>th</sup> August, 2016 passed by the learned 9<sup>th</sup> Joint Civil Judge Senior Division, Pune below Exhibit 225 in Special Civil Suit No. 1002 of 1992.

3. Application Exhibit 243 was filed by defendant nos. 1A to 1F

under section 9A of the Code of Civil Procedure that the issue of maintainability, limitation and entitlement of the plaintiff to compensation to the extent of his share on account of acquisition of property are to be decided as preliminary issue. The learned trial Judge has rejected the said Application by a reasoned order. Similarly, Application Exhibit 225 is filed under Order 7 Rule 11 of the Code of Civil Procedure praying that the suit is not maintainable on the ground of limitation and it is to be rejected. However, the learned trial Judge has also rejected the said Application with reasoned order.

4. I am informed by the learned counsel for the respondent that the trial is commenced before the Court and the plaintiff is under cross-examination.

5. The learned counsel for the applicants has submitted that the Application was not made under section 9A of CPC but it was under Order 7 Rule 11 on the point of maintainability. He submitted that the issue no. (dd) which was framed as an alternative prayer of the compensation and where the reasoning given by the learned Judge by holding that it is within limitation and on the basis of invoking the provisions to Section 21(5) of the Specific Relief Act is not legal. The learned counsel submitted that the prayer of share in the

compensation in respect of acquired land is an independent relief and for that purpose, the evidence is to be appreciated independently and no relief in such a way can be granted as per proviso to Section 21(5) of the Specific Relief Act.

6. Heard the submissions. It is made clear that the learned Judge has considered the issue of limitation while deciding the Application under Order 7 Rule 11 of CPC and only averments in the plaint are to be considered by the trial Court and not the defence taken by the defendants. Therefore, the issue of limitation, as I am informed is framed under Order 14, is kept open and the issue of maintainability is also kept open and they are to be decided independently after taking into account the evidence of both the parties.

7. With this, both the Writ Petition and Civil Revision Application are disposed of.

8. The suit is to be expedited and decided on or before 30<sup>th</sup> November, 2018. Parties to cooperate.

**(MRIDULA BHATKAR, J.)**