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

CIVIL REVISION APPLICATION NO.15 OF 2018

Dinkar Narayan Yevale	...	Petitioner
V/s.		
Kisan Namdeo Avhale and ors	...	Respondents

Ms. Amita A. Agarwal, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner .
- 2] By this Revision Application filed under Section 115 of Code of Civil Procedure, the petitioner is challenging the order below Exh.28 passed by 11th Joint Civil Judge Junior Division, Pune, in R.C.S.No.1211 of 2016.
- 3] Application at Exh.28 was filed by the present petitioner under Section 9-A of Code of Civil Procedure for framing of preliminary issue, on the point of limitation. Respondent has resisted the said application. The trial Court, after considering that the issue of limitation is always a mixed question of law and fact and having regard to the averments made in the plaint, that respondent got

knowledge about the sale deed only on 16th June, 2016 and within three years thereafter, the suit is filed held that at this stage there is no necessity of framing the issue of limitation, as “preliminary issue” and rejected the said application.

4] In my considered view, having regard to the law laid down by the Hon'ble Supreme Court in *Foreshore Co-operative Housing Society Ltd -vs- Praveena D. Desai (Dead) Through Lrs and ors, [(2006) (6) Bom CR 230]*, as the issue of limitation is a mixed question of law and fact and it requires recording of evidence, no fault or jurisdictional error can be found in the impugned order passed by the trial Court, while rejecting the application for preliminary issue under Section 9-A of CPC. Hence no interference is warranted in the impugned order passed by the trial Court in revisional jurisdiction.

5] The Revision Application therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]