

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**Civil Revision Application No.145 of 2017**  
**(Arvind Narayan Zurmure and another .vs. Mrs. Rohini Ramesh Khawase**  
**and others. )**

-----  
Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions                      Court's or Judge's orders.  
and Registrar's orders

---

Mr. S.P. Kshirsagar, Advocate for Applicants.

Mr. C.B. Dharmadhikari, Advocate for Respondents.

**CORAM : Manish Pitale, J.**

**DATED : March 21, 2018.**

This civil revision application is filed by original defendants in a suit filed by the respondent Nos. 1 and 2 for partition, separate possession, mesne profits, declaration and permanent injunction. In the said suit, the respondents-plaintiffs have prayed for declaration that the so called will dated 22.03.2007 be declared as illegal and bad in law. The appellants-defendants filed an application under Section 9-A of the Civil Procedure Code, 1908, requesting the Court to frame an issue of jurisdiction claiming that the suit filed by the respondents was barred by limitation.

2. On the said application, the Court below passed an order on 28.06.2017 framing a preliminary issue to the effect as to whether the suit was barred by limitation. It was claimed by the appellants that the aforesaid respondents acquired knowledge about existence of the aforesaid will dated 22.03.2007 in 2012 during proceedings before the City Survey Officer. They

claimed that since the suit was filed on 20.03.2017, it was clearly barred by limitation. On the other hand, the aforesaid respondents claimed that the cause of action actually arose for them when a copy of the said will was made available to them on 08.07.2015 when proceedings were pending before the Superintendent of Land Records.

3. These contentions were placed before the Court below on the question of limitation to be decided as a preliminary issue. By the impugned order dated 21.09.2017, the Court below has held that the suit is within limitation. The appellants are aggrieved by the said order and it is contended that the Court below failed to appreciate the material on record in the correct perspective and that even a reading of the plaint demonstrated that the suit was barred by limitation. It was further contended that there was hardly any reasoning in the impugned order when the Court below came to the conclusion that the suit was within limitation.

4. A perusal of the impugned order demonstrates that while serious question arose on the issue of limitation, the discussion and conclusion in the impugned order is far from satisfactory. The aspect as to when did the actual cause of action first arise, has not been discussed in the impugned order. Significant aspects like clear and unequivocal threat arising for the respondents-plaintiffs to rush to the Court, have not been discussed or analysed by the Court below while

passing the impugned order.

5. Hence, I am of the view that the impugned order is unsustainable and it deserves to be set aside. At the same time, it would be appropriate that the Court below decides the aforesaid issue of limitation afresh, taking into consideration the entire material on record and the position of law as regards triggering of cause of action and calculation of limitation, based on various judgments of this Court and the Hon'ble Supreme Court in that regard. The learned counsel appearing for the parties agree that if the said issue regarding limitation is to be decided afresh, it could be decided along with all other issues pertaining to the merits of the suit filed by the respondents-plaintiffs. In other words, the issue of limitation could be taken up and decided on the basis of evidence that may be led by the parties and it could be decided as one of the issues along with other issues that would arise in the suit filed by the respondents-plaintiffs.

6. In that view of the matter, this civil revision application is partly allowed, the impugned order is set aside and the issue of limitation is remitted back to the Court below, to be decided along with other issues that may arise on merits in the suit. It would be in the interest of justice that the suit is finally heard and disposed of as expeditiously as possible and in any case within a period of one year from the date that a copy of the order passed today by this Court is placed before the Court below.

7. In the light of the above, civil revision application is partly allowed with no order as to costs.

**JUDGE**

halwai