

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

927. WRIT PETITION NO. 7339 OF 2019

Isamoddin S/o Syed Ali and others ...Petitioners

Versus

Basha Hussaini Inamdar and others ... Respondents

*Mr. P.V. Mandlik, Senior Advocate, I./by Mr. P.P. Mandlik,
Advocate for petitioners*

CORAM : RAVINDRA V. GHUGE, J.

DATE : 19th June, 2019

PER COURT:

1. The petitioners, who are original plaintiffs, are aggrieved by the order dated 5th April, 2019 passed by the Trial Court, vide which, an application Exh. 179 filed by defendant No.1 has been allowed and an additional issue as regards 'limitation' is being framed in Reg. civil suit No. 1/2010.

2. The learned Senior Advocate appearing on behalf of the petitioners submits that issue No.4, which is already framed as “ *Whether the plaintiffs are entitled for the relief of declaration as sought ?* ” would include and cover the issue of limitation. He, however, takes a strong exception to the fact that the Trial Court has allowed Exh. 179 when the oral arguments in the matter after recording of the oral evidence, had commenced.

He, therefore, submits that framing of an issue at this stage is impermissible and the defendants are deliberately delaying the suit, which is nine years old.

3. I am not convinced that issue No.4 would include the issue “Whether the suit is barred by Limitation ?”. Such an issue, which goes to the root of the maintainability of the suit, will have to be specifically framed.

4. In so far as the contention of the petitioners that such an issue should not have been framed at the end of the trial is concerned, I find that ultimately, to meet the ends of justice, the Trial Court has rightly considered the said issue. Moreover, the said issue is decisive and was not framed despite the specific pleadings of defendant No.1 in paragraph No.6 of the written statement at Exh. 15.

5. In view of the above, this petition being devoid of merit, is therefore, dismissed.

6. However, I find it appropriate to direct the Trial Court to decide Reg. civil suit No. 8/2010 as expeditiously as possible and preferably, on or before 31st December, 2019.

(RAVINDRA V. GHUGE)
JUDGE