

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

WRIT PETITION NO. 546 OF 2019

**YAMUNABAI RAMDAS WAKADE AND OTHERS
VERSUS
BHASKAR ASARAM AUTADE AND OTHERS**

...
Advocate for the Petitioners : Shri H. V. Patil
Advocate for Respondent No.1 : Shri B. V. Dhage
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 03rd JUNE, 2019.

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PER COURT :

1. The petitioners are the original defendant Nos. 7 to 12 in RCS No. 297/2014. They seek to challenge the order dated 15/06/2018 passed by the Trial Court below Exhibit 23 thereby refusing to deal with the issue of limitation prior to taking up all other issues in the said suit.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. Submission is that, earlier an application was filed under Section 9-A (Maharashtra Amendment) to the Code of Civil Procedure seeking rejection of the suit on the ground of limitation. The earlier application

was rejected by the Trial Court and the petitioners filed Writ Petition No. 362/2016. Same was disposed off on 15/11/2017 as a preliminary issue of limitation was not to be taken up under Section 9-A.

3. Exhibit 23 was filed raising the issue of limitation under Order XIV Rule 2 of the CPC. It is, therefore, contended that the Trial Court should first decide the issue of limitation before touching all other issues. Reliance is placed upon the judgment of this Court, in the matter of *Shraddha Associates, Pune and another Vs. ST. Patrick's Town Co-operative Housing Society Ltd. and others, 2003(2) Mh.L.J. 219*.

4. The learned Advocate for respondent No.1 – original plaintiff submits that the Trial Court has already framed an issue with regard to limitation. The suit is more than five years old. Recording of evidence would commence and all the issues can be taken up together. Since the plaintiff has made specific pleadings with regard to the knowledge of the execution of the sale deeds, evidence will have to be led to prove the date on which the plaintiff gathered the knowledge

of such sale deeds and the suit would, therefore, fall within the limitation.

5. Having considered the submissions of the learned Advocates and having gone through the petition paper book with their assistance, I find that the Trial Court has rightly concluded that the pleadings of the plaintiffs will have to be tested after recording of oral and documentary evidence. If the averments as regards the knowledge of the execution of the sale-deeds is proved by the plaintiff, the case would stand on a different footing. In the above backdrop of such a view taken, I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause grave injustice to the petitioner defendants.

6. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-