

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

WRIT PETITION NO.11752 OF 2019

**ANNAPURNABAI SHAHASING PATIL AND OTHERS
VERSUS
MANGALSING TUKARAM PATIL**

...
Advocate for the Petitioners : Shri A. J. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th SEPTEMBER, 2019.

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PER COURT :

1. The petitioners, original defendants in Regular Civil Suit No. 48/2010, are aggrieved by the order dated 25/06/2019 passed by the Trial Court, by which, application Exhibit 189 filed by these defendants invoking Order VII Rule 11 (d) of the Code of Civil Procedure, has been rejected.

2. The learned Advocate for the petitioners has strenuously canvassed the eleven grounds formulated in the memo of the petition. Reliance is placed upon Article 65 of the Limitation Act.

3. Contention is that the plaintiff has filed the suit for

seeking a declaration of title and the basis of such a claim is adverse possession. The entire recording of oral and documentary evidence in the matter was concluded. At the stroke of advancing final arguments, the petitioners have filed Exhibit 189.

4. The contention of the petitioners is that if the issue of adverse possession is to be considered, the matter would relate back to the year 1970 in the light of the pleadings of the plaint, especially paragraph Nos. 2 and 3 of the plaint. It is further canvassed that a suit would be barred after 12 years from the date of the alleged adverse possession.

5. I find from the record that the Trial Court has noted that an order was earlier passed on 10/12/2018 below Exhibit 189 vide which the issue "*Whether suit is barred by law*" has already been framed. Pursuant thereto, the parties have led evidence. By an earlier order passed by the Trial Court, it was held that the relief of title by adverse possession was not available to the plaintiff in view of the law laid down by the Honourable Apex Court. Moreover, Exhibit 189 was filed at the fag end of the

trial. It also appears that the Trial Court has framed an issue as to whether the suit is barred by law.

6. Considering the above, the Trial Court would consider the oral and documentary evidence before it and would decide the said suit in the light of the pleadings of the parties.

7. As such, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore dismissed. Nevertheless, in the event these petitioners suffer an adverse order in the suit, they would be at liberty to raise all issues and contentions if they desire to challenge such a decision and such contentions would then be considered by the competent Court on their own merits.

(RAVINDRA V. GHUGE, J.)

shp/-