

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11713 OF 2018

SHARADRAO GANESHRAO ADKINE
VERSUS
VIDYADHAR GANPATI NAGEWAR SONAR

...
Advocate for Petitioner : Shri Gangakhedkar S.S.
Advocate for Respondent : Shri Ingole G.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 14, 2019
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PER COURT :-

1. On 20.10.2018, I had passed the following order:-

"1 Leave to place on record a copy of the issues cast by the trial Court as page No.34.

2 The petitioner / original defendant in RCS No.8 of 2015 is aggrieved by the order dated 3.8.2018, by which, his application Exhibit 42, praying for additional issues to be cast, has been rejected.

3 I have considered the submissions of the learned Advocate for the petitioner. I have gone through the copy of the plaint placed on record. I have perused the pleadings of the parties. I have also considered the seven issues cast by the trial Court on 15.9.2017 and the topics suggested by the petitioner in Exhibit 42 as a basis for framing of additional issues.

5 *The topics putforth by the petitioner in clauses (1) and (2) are covered by issue No.1. In so far as the topic of non-joinder of necessary parties is concerned, I do not find that the suit is for partition and separate possession with regard to the ancestral property and as such, notwithstanding the pleadings of the parties, there is no requirement for framing an issue as regards non-joinder of parties.*

6 *The petitioner has raised an issue of bar of limitation. It is specifically pleaded in the written statement that the suit is not filed within limitation. I do not find an issue in relation to limitation having been framed by the trial Court.*

7 *The trial Court has recorded that the issue of non-joinder of necessary parties can be considered as a legal issue, even if there is no specific issue cast. However, if the issue of limitation is involved and eventually the suit is dismissed on account of being barred by limitation, the issue that would crop up is that the trial Court has dismissed the suit without framing an issue of limitation.*

8 *I am, therefore, entertaining this petition only to the extent of deciding the issue as to whether the issue of limitation is required to be framed.*

9 *Issue notice to the respondent, returnable on 3.12.2018. Until then, the trial Court would adjourn RCS No.8 of 2015. It be noted that this Court will decide this*

petition finally at the admission stage, on the returnable date.

10 Copy of the paper book for issuance of notice shall be supplied and all objections shall be removed on/or before 24.10.2018, failing which this application shall stand vacated without reference to the Court on 25.10.2018."

2. Learned Advocate for the respondent strenuously canvasses that as his suit is for redemption of mortgage, the limitation period would be of 30 years under Article 61(a) of the Limitation Act, 1963.

3. I find from the submissions of the parties and their pleadings that the petitioner herein seeks framing of an issue of limitation. If his pleadings raise an issue of limitation, I do not find any impediment for the trial Court to frame such an issue, which obviously would be subject to an adjudication based on the pleadings and the oral and documentary evidence.

4. In view of the above, the impugned order dated 3.8.2018 is quashed and set aside and Exhibit 42, filed by the petitioner, in RCS No.8 of 2015, is partly allowed directing the trial Court to frame an issue as to, 'whether the defendant proves that the suit is barred by limitation.' All contentions of the litigating sides, on this

issue, are kept open. All the issues in the suit would then be tried together at the final adjudication of the said suit.

(RAVINDRA V. GHUGE, J.)

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akl/d