

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO.1753 OF 2018

SHESHRAO MAHADEVRAO INGALE AND OTHERS
VERSUS
VIJAYMALA AASHROBA GALBE AND OTHERS

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Advocate for Petitioners : Shri Deshpande C.R. h/f Deshpande C.C.
Advocate for Respondents 1 to 3 : Shri Patil Milind

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2019

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PER COURT :-

1. The petitioners, who are some of the original defendants, are aggrieved by the impugned order dated 22.11.2017, by which, the trial Court has declined to frame an issue as regards limitation, in view of the objections of the defendants set out in their written statement.

2. I have heard the submissions of the learned Advocates for the respective sides. Learned counsel for the original plaintiff strenuously opposes this petition and prays that this petition deserves to be dismissed.

3. Having considered their submissions and having gone through the pleadings of the parties, I find that as the six sale deeds from 1984 till 1997 are at issue in RCS No. 65 of 2015, the issue of limitation would arise on a plain reading of the dates of the sale deeds and the

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lodging date of the suit.

4. It, however, cannot be ignored that the plaintiff will have the right to establish the date of knowledge of the sale deeds and make out the case that the suit is within limitation. Even if the issue is not cast, the law would not preclude the trial Court from *suo moto* considering the said issue, if it pertains to the exercise of its jurisdiction.

5. In view of the above, this petition is partly allowed. The impugned order dated 22.11.2017 is partly modified by directing the trial Court to frame an issue as to whether the suit is filed within limitation.

(RAVINDRA V. GHUGE, J.)

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