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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7146 OF 2013

Balasaheb Bhimashankar Yelmeli & Ors. ..Petitioners.

V/s.

Sou. Bebi Shivanand Yalagi ..Respondent.

Mr.Ashok B.Tajane for the petitioners.

Mr.Swaroop Karade I/b.. Surel S.Shah for the respondent.

CORAM : M.S.SONAK, J.

DATE : MARCH 22, 2019

ORAL JUDGMENT

Heard Mr.Tajane, learned counsel for the petitioner and Mr.Karade, learned counsel for the respondent.

2. Challenge is to the order dated July 6, 2013 by which learned trial Judge has declined to frame a preliminary issue of limitation.

3. Mr. Tajane, learned counsel for the petitioner submits that the issue of limitation is required to be framed as a preliminary issue and decided it prior to taking up consideration on the remaining issues. He relies on the decision of this Court in the case of *Satpuda Tapi*

*Parisar Sahakari Sakhar Kharkhana Ltd. V/s. Jagruti Industries & Anr.*¹

in support of his contention.

4. In the present case, learned trial Judge has correctly noted that the plaintiff was not a party to the document dated April 5, 2006 and, therefore, the issue of fact arises in the context of the date on which the plaintiff was acquainted with the said document. Since in the present case, the issue of limitation was a question of law and fact, there is no error by the trial Judge that the issue of limitation can be taken up for consideration along with other issues which arise in the suit. However, the issue of limitation will have to be framed and taken up along with the other issues in the suit.

5. The decision in the case of *Satpuda Tapi Parisar Sahakari Sakhar Kharkhana Ltd.* (supra) has mainly on the context of section 9A of the Code of Civil Procedure and, therefore, is not applicable to the fact situation in the present case.

6. For the all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed.

7. There shall be no orders as to costs.

(M.S.SONAK, J.)

¹ 2008(5) Bom C.R.284