

Hiralal Bhagawanji Nijamkar	...	Petitioner
Vs.		
Sheelabai Baburao Lokhande	...	Respondent

CORAM : R. G. KETKAR, J.
DATE : JULY 25, 2019

Heard Mr. Rohile, learned Counsel for the petitioner at length.

3. In support of this Petition, Mr. Rohile submitted that defendant is occupying the suit premises since the year 1991. The respondent-plaintiff has instituted Suit on 24.08.2016 inter alia contending that defendant is claiming tenancy rights in the suit premises since 2005. The defendant had instituted Civil Suit No.282 of 2006 for declaration that he is a tenant. The Suit was dismissed. Against that decision, defendant preferred Appeal No.402 of 2013. By order dated 09.03.2015, the Appellate Court dismissed the Appeal. The plaintiff, therefore, instituted Suit on or about 24.08.2016 contending that defendant is a trespasser in the suit premises and for compensation. He submitted that basically, plaintiff should have instituted Suit on or before 2003 as defendant is occupying the suit premises since 1991. Thus, on the face of it, the Suit is barred by limitation. The plaintiff cannot invoke Section 14 of the

Limitation Act so as to exclude the time spent in litigating the earlier round of litigation. He submitted that the learned trial Judge ought to have framed issue of limitation. In support of his submissions he relied upon the decision of **Rajender Singh Vs. Santa Singh, (1973) 2 SCC 705**, and in particular paragraphs 18 and 19 thereof.

4. I have considered the submissions advanced by Mr. Rohile. I have also perused the material on record. A perusal of the material on record, and in particular paragraph 3 of the plaint shows that the plaintiff asserted that defendant had earlier instituted Suit for declaration of his tenancy rights in the suit premises. The Suit was dismissed. The appeal preferred by the defendant was dismissed on 09.03.2015. According to the plaintiff, after decision of earlier round of litigation, the status of the defendant became clear and accordingly the Suit is instituted in the year 2016.

5. In view thereof, prima facie, it cannot be said that the Suit instituted by the plaintiff is barred by limitation, and therefore, it is necessary to frame additional issue, extracted hereinabove. Even otherwise, under Section 3 of the Limitation Act, 1963, every Suit instituted after the prescribed period shall be dismissed although limitation has not been set up as a defence. Thus, the duty is cast upon the trial Court to satisfy itself whether the Suit instituted by the plaintiff is within the prescribed period of limitation. In view thereof, reliance placed by Mr. Rohile on the decision of **Rajender Singh** (*supra*) does not advance case of the defendant. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)