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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 571 OF 2019

Shri. Ashok Damodar alias Damu BhandureApplicants
and others

V/s.

Shri. Gulam Mustafa Yasin Kokani and othersRespondents

Mr. Shriram Kulkarni for the Applicants

CORAM : NITIN W. SAMBRE, J.

DATE : OCTOBER 17, 2019.

P.C.

Heard.

2 This revision is by original defendant nos. 1 to 5. Respondent nos. 1 to 7 initiated R.C.S. No. 119 of 2017 on the file of Civil Judge Senior Division, Nashik praying therein a declaration that vide Hibanama dated 15/06/1961 is legal and binding. By said document, entire property stood vested in the name of mother of plaintiff Zohrabi. As a consequence, plaintiffs being her legal heirs are the owners of the

property. Declaration is also sought that sale deed dated 19/06/1961 is null and void, with other ancillary reliefs.

3 The aforesaid suit is based on the alleged Hibanama dated 15/06/1961 which claimed to have been discovered in 2016 after the death of mother of respondent-plaintiffs.

4 In the meantime, property in question came to be transferred to Tukaram Bhandure vide sale deed dated 14/07/1962 through whom present applicant-defendant to the suit claim to have succeeded to the suit property.

5 In the said suit, application Exhibit 18 came to be moved under Section 9(A) and Order VII Rule 11(A) (B) (F) of Code of Civil Procedure, 1908.

6 It is claimed that suit claim is under-valued as the valuation should be based on market rate of property at the rate of Rs. 15,000/- per sq. mtr.

7 The said application came to be partly allowed and following preliminary issues were framed:

(a) Whether the suit is properly valued?

(b) Whether the proper court fee is paid on the valuation of the suit claim?

8 This very order passed below Exhibit 18 on 12/07/2019 is the subject matter of challenge.

9 Shri Kulkarni, learned counsel for the applicant, based on the Judgment of the Apex Court in the matter of **Raghwendra Sharan Singh V. Ram Prasanna Singh (Dead) by Lrs.**¹ would urge that the suit should have been rejected on the ground of limitation. According to him, the suit is filed almost after 50 years of alleged Hibinama and that being so, the suit is barred by limitation. According to him, even if the said issue is not raised before the Court below being point of law, it is open for him to argue the same before this Court.

¹ [AIR 2019 SUPREME COURT 1430]

10 If the aforesaid contentions are appreciated, in the very application Exhibit 18, applicant has claimed in para 13 that the valuation be fixed after recording evidence.

Apart from above, the trial Court has already framed preliminary issues based on the objection to the valuation of claim.

11 The issue of limitation is concerned, it is always open for the applicant to raise the said issue at an appropriate stage, particularly when said issue was not canvassed before the court below. That being so, order impugned passed by Court below thereby partly allowing application Exhibit 18 of the petitioner is in accordance with law. If the preliminary issues are answered in favour of the present applicant-defendant, necessary consequence will follow. That being so, no case for interference in revisional jurisdiction is made out.

12 Revision as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]