

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5340/2019

Mohd. Kaleem & ors.

..VS..

Mehrunnisa Mohd. Haneef & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.F. Bhagwani, Advocate for the petitioner(s)

CORAM : Z.A.HAQ, J.
DATED : 19/08/2019

Heard.

In the civil suit filed by the respondent nos. 1 and 2 praying for decree for partition and separate possession of their share in the suit property and for decree for declaration that the partition deed alleged to have been executed on 23/03/1982 between the defendant no. 1 and deceased Mohammed Zahoor, the petitioners / defendants had filed an application (Exh. 41) under Order 7 Rule 11 of the Code of Civil Procedure praying that the plaint be rejected as the claim of the plaintiffs is barred by limitation. According to the defendants, the limitation for challenging the partition deed dated 23/03/1982 lapsed after three years of its execution and the civil suit is filed in 2016 i.e. almost after three decades of lapsing of the limitation.

The learned trial Judge has dismissed the application (Exh. 41) by the impugned order observing that the claim of the plaintiffs is that they got knowledge in

August, 2015 about execution of the partition deed dated 23/03/1982 and the civil suit is filed immediately within one year, and therefore it cannot be said to be barred by limitation.

I find that the learned trial Judge has rightly rejected the application under Order 7 Rule 11 of the Code of Civil Procedure, leaving the contentions of the parties open for consideration at appropriate stage i.e. after they are afforded opportunity of adducing evidence to prove their case. It cannot be said that the learned trial Judge has committed any error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

JUDGE

Ansari