

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

WRIT PETITION NO.780 OF 2020

Sandeep Keshao Kadukar and others

Vs.

Mahesh s/o Narhari Randive

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

Court's or Judge's orders

Mr. S. G. Karmarkar, Advocate for petitioners.
Mr. R. A. Gupte, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 12/10/2021

The present petition challenges the order dated 18.12.2019 passed by the learned Trial Court below Exh.78 rejecting the application for framing an issue on the ground of limitation. It is not in dispute that the suit for specific performance was filed by the respondent against Keshav and Chandrashekhar, in which suit, the petitioner was not a party at the initial stage but, was lateron joined as a party defendant on the ground that he was the legal heir of Keshav, the original defendant No.1. It is material to note that the agreement dated 23.05.2012 is claimed to have been entered into by Keshav, as the Karta of the family, comprising of Chandrashekhar the original defendant No.2 and Sandip the petitioner herein, which would indicate that the petitioner would have an independent right to defend the suit, claiming specific performance and not only in his capacity as the legal heir of Late Keshav. That being the position, a plea of limitation raised by the present

petitioner would clearly be required to be adjudicated, for which framing of an issue of limitation would be necessary. The impugned order does not consider this position and merely rejects the application on the ground that there is no counter allegation in this regard made in the plaint, which is something inconceivable in fact, as well as in law.

The impugned order therefore, cannot be sustained the same is hereby quashed and set aside. The application at Exh.78 for framing issue of limitation is allowed.

JUDGE

Sarkate