

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11638 OF 2021

Bhagwat S/o Kerba Kanse
and another

.... Petitioners

VERSUS

Mandakini Padmakarrao Landge

.... Respondent

.....
Mr. A.R. Tapse, Advocate for the Petitioners
Mr. V.B. Anjanwatikar, Advocate for Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th JUNE, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the learned Civil Judge, Junior Division, Kaij below Exhibit 78, thereby rejecting the application filed by the petitioner No.2 under Order XIV Rule 5 to frame the additional issues.

2. Civil Suit No.208 of 2007 is filed by the plaintiff/respondent seeking removal of encroachment and the possession of the suit property. The plaintiff claimed that the cause of action arose on 03.09.2007 and 07.09.2007 when the defendants encroached in the suit property.

3. The petitioners/defendants resisted the suit by filing the written statement. Issues were framed in the suit on 25.09.2018. Thereafter, the application below Exhibit 78 is filed on 03.02.2020, requesting the trial Court to frame the issues i.e. (i) Whether the plaintiff's suit is within limitation? (ii) Whether the suit is bad for non joinder of necessary parties? It is contended in the said application that out of survey No. 22, some lands are acquired by the Government for Manjara Project.

4. The application is resisted by the plaintiff by filing a detail say. The trial Court has rejected the said application on the ground that as per the pleadings of the plaintiff, the cause of action has arisen on 03.09.2007, when 93 R land belonging in possession of the plaintiff was encroached by the defendant by removing South-North boundary/*Bandh* and encroachment to the extent of 41 R land was made.

5. Considering the rival submissions, the trial Court has come to the conclusion that there is no question of framing the issue of limitation. The trial Court further held that, even if it is assumed for the sake of argument that cause of action arose in the year 2001, still considering the provision of Article 65 of the Limitation Act, the plaintiff is entitled to file suit for

possession in 12 years. Thus, since the suit is filed in respect of cause of action, which arose in the year 2001, in the year 2007, the same is within limitation.

6. Having heard the learned advocate for the petitioners and the learned advocate for the respondent and after perusal of the record, this Court is of the considered view that the reasons recorded by the trial Court are proper. The trial Court has properly appreciated the contentions of the respective parties and has correctly applied the law to the facts and has rightly rejected the application Exhibit 78.

7. There is no illegality or perversity in the order impugned in this petition. The writ petition, being devoid of any merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane