

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6289 OF 2022

**SAHEBRAO DEVRAM AUTADE AND OTHERS
VERSUS
DAGUBAI ALIAS VIJAYA BABURAO JAGTAP AND OTHERS**

...
Advocate for Petitioners : Mr. Chandrashekar V. Korhalkar

...

CORAM : MANGESH S. PATIL, J.

DATE : 28.06.2022

PER COURT :

Leave is granted to amend the petition forthwith so as to delete the expression as regards the nature of the suit.

2. The petitioners who are defending the suit for partition and separate possession instituted by the respondent No.1 are aggrieved by the order passed by the trial court rejecting their application (Exhibit-48) whereby they prayed for framing the issue of limitation and its trial as a preliminary one.

3. The learned advocate for the petitioners vehemently submits that though the respondent No.1 has articulated the prayers in the plaint as if it is a plain suit for partition, in fact she is questioning a previous arrangement which was in the nature of a partition between her father Bhavrao and his co-laterals. Since it is a suit for partition which is likely to take years together to reach finality, it would have been appropriate for the trial court to have allowed the application, framed the issue of limitation

and tried it as a preliminary one, instead of undertaking a full-fledged scrutiny in respect of all the facts and issues.

4. I have carefully considered the submissions and perused the pleadings of the parties as also the order under challenge.

5. It is the suit for partition simplicitor claiming that the respondent No.1 has 1/3rd share in the suit property. Though she has asserted that some of the properties were transferred by her father in the name of some of the defendants, it was merely in the form of a change in mutation in record. She has not admitted about any antecedent partition.

6. If the petitioners are intending to oppose the suit as they are entitle to, on the ground of previous partition the question as to whether there was indeed any partition as is being contended by the petitioners is a pure question of fact which can be decided only at a full-fledged hearing.

7. It is trite that only the issues which do not require any investigation into disputed facts can be tried as preliminary ones.

8. Going by the pleadings, the issue of limitation being raised is clearly a mixed question of law and fact. Precisely for this reason the trial court has refused to concede to the request of the petitioners. There is no illegality.

9. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)