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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9650 OF 2017**

MR. BHAGWAN LAXMAN KUMBHARKAR & ORS.Petitioners

V/s

SHRI. SHANTARAM LAXMAN PHADTARE & ORS ...Respondents

None for the Petitioners.

Mr. Aadesh V. Konde-Deshmukh i/b Mr. Prashant M. Patel for
Respondent Nos. 1 and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 21, 2022

P.C.:-

- 1] None for the Petitioners.
- 2] Heard Mr. Konde-Deshmukh, learned Advocate holding for
Advocate Mr. Patel for Respondent Nos. 1 and 2.
- 3] Impugned in the present Petition is an order passed by the court
below on 24/3/2017 below Exhibit-47 whereby Trial Court has
proceeded with hearing of the suit on merit instead of deciding
preliminary issue.
- 4] I have perused the order impugned dated 24/3/2017.
Preliminary issue is framed in relation to limitation. Trial Court is
verymuch justified in observing that the issue of limitation is a mixed

question of fact and law. Apart from above, fact remains that the order impugned dated 24/3/2017 is not stayed by this Court. As such, suit must have proceeded. Apart from above, preliminary issue was framed under Section 9A of the Civil Procedure Code which is by Maharashtra Amendment is already stood deleted. That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)