

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION 837 OF 2011

Eknath Balbhim Jahdav & Ors. ..Applicants

V/s.

Shailesh Surendra Varvadkar & Ors. ..Respondents

Mr. Sameer A. Kumbhakoni, Advocate for the Applicants.

Mr. Ramesh Jaiswal i/b Asmita Jaiswal for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 16th JUNE 2022

P.C.

1. The challenge in the revision is to the order dated 27.06.2011 in Special Civil Suit 234 of 2009 whereby the Joint Civil Judge Senior Division, Solapur answered the preliminary issues in favour of the plaintiff and held that the suit is not barred by *res judicata* nor is the suit barred by law of limitation.

2. The order impugned is rendered in exercise of jurisdiction under Section 9A of the Civil Procedure Code.

3. Section 9A of the Code is deleted by the Maharashtra Act 61 of 2018 and the saving clause which is relevant reads thus:

(2) In all the cases, where a preliminary issue framed under section 9A has been decided holding that the Court has jurisdiction to entertain the suit, and a challenge to

such decision is pending before a revisional Court, on the date of commencement of the Amendment Act, such revisional proceedings shall stand abated.

Provided that, where a decree in such suit is appealed from any error, defect or irregularity in the order upholding jurisdiction shall be treated as one of the ground of objection in the memorandum of appeal as if it had been included in such memorandum.

4. In this view of the matter it will have to be held that the revision abates.
5. Needless to observe that if the applicants are aggrieved by the final judgment and an occasion to prefer an appeal arises, the error, defect or irregularity in the order impugned shall be treated as one of the ground of objection in the memorandum of appeal.
6. Subject to the observations the supra the Civil Revision Application is disposed as abated.

(ROHIT B. DEO, J.)