

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

CIVIL REVISION APPLICATION NO.33 OF 2022

1. Rajesh Gajanan Nikhare
Aged about 54 years,
Occ: Cultivation,
R/o Behind Satkar Hotel
Near Shyam Talkies Gadchiroli,
Taluka and District Gadchiroli.
 2. Smt. Ranjana Shamrao Sorte
Aged about 52 years,
Occ: Cultivation,
R/o Near Petrol Pump,
Armor Road Gadchiroli,
Taluka and District Gadchiroli.
 3. Smt. Chayaai Sharad Bakde
Aged about 48 years,
Occ: Cultivation
R/o Behind Satkar Hotel
Near Shyam Talkies Gadchiroli,
Taluka and District Gadchiroli.
 4. Sanjay Gajanan Nikhare
Aged about 45 years,
Occ: Cultivation
R/o Behind Satkar Hotel
Near Shyam Talkies Gadchiroli,
Taluka and District Gadchiroli.
 5. Sau. Vandana Ramesh Kumhare
Aged about 43 years,
Occ: Cultivation, R/o Shikshak Colony,
Behind Police Station Bhadravathi,
Taluka Bhadravati,
District Chandrapur.
- **APPLICANTS**

...VERSUS...

1. Lahuji Vithobaji Nikhare
Aged 87 years, Occu. Cultivation
R/o Navegao, Post Mudza, Gadchiroli
Ta & Dist Gadchiroli.
2. Gangubai Khemaji Nikhare (dead)
LRs already on record.
3. Mandabai Rambhau Nikhare
Aged about 67 years,
Occu: Cultivation.
4. Anjusha Chandrashekhar Dalal
Aged about 45 years,
Occu. Cultivation.

Respondent No. 3 & 4 C/o Chandrashekhar Dalal
R/o Behind Biyan Nagar MEL Colony, Near Dhengale
Kirana Shop Chatrapati Nagar Tukum, Chandrapur,
Taluka & Dist. Chandrapur.
5. Bhaskar Khemaji Nikhare
Aged about 65 years,
Occu. Cultivation,
R/o Navegaon Post Mudza Gadchiroli,
Taluka & Dist Gadchiroli.
6. Vimal Laxman Dhakate
Aged about 59 years,
Occu. Cultivation,
R/o Shrinagar Delanwadi Ward,
Bramhapuri, Ta. Bramhapuri,
Dist. Chandrapur.
7. Pushpa Ravindra Kohade
Aged about 53 years,
Occu. Cultivation,
R/o Navegaon, Post Mudza, Gadchiroli,
Ta & Dist Gadchiroli.
8. Lalita Ramesh Dhakate
Aged about 50 years,
Occu. Cultivation,
R/o Navegaon, Post Mudza, Gadchiroli,
Ta & Dist Gadchiroli.

9. Sunita Maroti Gonnade
Aged about 46 years,
Occu. Cultivation,
R/o Pimpalgaon (Bho),
Ta. Bramhapuri, Dist. Chandrapur.
10. Tanaji Shamrao Murteli
Aged about 30 years,
Occu. Service, R/o Pardi,
Ta & Dist Gadchiroli.
11. Ravindra Nilkant Kumbhare
Aged about 33 years, Occu. Service,
R/o Pardi, Ta & Dist Gadchiroli.
12. Sant Nirkari Mandal through
Adhikrut Pratinidhi
Shri Kisan Lilaram Nagdeve
Aged about 55 years, R/o In front
of Police Station Desaiganj
(Wadsa) Ta Desaiganj
Dist. Gadchiroli.

..... **RESPONDENTS**

Mr. V. N. Morande, Advocate for Applicants.
Mr. N. R. Bhishikar, Advocate for Respondents.

CORAM: **ROHIT B. DEO, J.**
DATE: **22nd MARCH, 2022.**

ORAL JUDGMENT:

The applicants are the defendants 1 to 5 in suit instituted by the non-applicant 1 Lahuji Vithobaji Nikhare seeking decree of declaration and partition of the suit property.

2. The defendants 1 to 5 preferred an application Exhibit-32 praying that preliminary issue of limitation be framed.

The learned trial Court directed the parties to adduce evidence on the point of limitation, which order was challenged in this Court by the plaintiff. This Court disposed of the writ petition with a direction to the trial Court to decide the preliminary issue. The parties have adduced evidence in support of their respective contentions and by the order impugned the suit is held to be within limitation.

3. Perusal of the order impugned reveals that the learned trial Judge has held that the oral and documentary evidence does not indicate that the plaintiff was aware of the transaction and other relevant facts, as could be the trigger for the limitation. It is further observed that the right to sue accrued to the plaintiff on 23.07.2018 and considering that the question of limitation is a mixed question of law and facts, at that stage it can be said that the suit is within limitation.

4. Certain observations in the order impugned do appear as unnecessary or self-contradictory. The learned trial Court was expected to render a finding on the basis of evidence as to whether the suit is barred by limitation. Having rendered a finding, there was no propriety for the trial Court to observe that the issue of limitation is a mixed one and at this stage, it can be said that the

suit is within limitation. Ultimately, all the evidence in support of the respective contentions qua limitation must have been ordinarily led by the parties and nothing prevented the learned trial Court from rendering a positive and conclusive finding as regards limitation.

5. However, in jurisdiction under Section 115 of the Civil Procedure Code (Code), I am not inclined to interfere for two reasons. I note from the order that the learned trial Judge has, rightly or wrongly, not recorded a conclusive finding which is apparent from the observation that at this stage it can be said that the suit is within limitation. In this view of the matter, the learned trial Judge can be presumed to have left the final adjudication on the issue of limitation open. Secondly, if the ultimate decree is against the applicants, all objections to the order impugned, if at all there is any occasion to challenge the final decree, can be raised in appeal.

6. Subject to what is observed *supra*, the civil revision application is dismissed.

JUDGE