

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3452 OF 2022

Smt. Rukhma w/o Tanbaji Mhaske and Ors.
Vs.
Mirchand s/o Yadavrao Mhaske and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.A. Pannase, Advocate for petitioners.
Mr. T.H. Khan, Advocate for respondent No.2.

CORAM : MANISH PITALE J.

DATE : 27.06.2022.

By this writ petition, the petitioners i.e. original defendants Nos.3 to 6 have approached this Court, challenging an order dated 11.02.2022 passed by the Court of 2nd Joint Civil Judge Senior Division, Wardha, whereby an application at Exhibit 14 for framing a preliminary issue filed on behalf of the petitioners, has been rejected.

2. The grievance of the petitioners is that the issue of limitation specifically raised on their behalf ought to have been framed as a preliminary issue so that the very maintainability of the suit could have been decided at the outset and the time of the parties as well as the Court below would not

be wasted on other issues, sought to be raised by the original plaintiffs.

3. This Court has perused the impugned order.

4. It is specifically taken note of by the Court below on the basis of the material on record that in the facts and circumstances of the case and considering the prayers made in the suit filed on behalf of the original plaintiffs, the question of limitation would necessarily be a mixed question of law and facts. On this basis, it is held that the said issue can certainly be framed and decided along with other issues that arise in the matter.

5. In the facts and circumstances of the case, this Court is convinced that no error is attributable to the course adopted by the Court below, while passing the impugned order.

6. Hence, the writ petition is dismissed.

JUDGE