



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

952 WRIT PETITION NO. 2053 OF 2023

GANESH VITHOBA ZALTHE AND OTHERS

VERSUS

CHATRABHUJ VITHOBA ZALTE AND OTHERS

...
Advocate for Petitioners : Mr. Pathak Athrva Makrand
Advocate for Respondents Nos. 1, 2, 4 to 6, 7 B to 7 D, 8 & 9 :
Mr. Syed G. R.

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 21st DECEMBER, 2023

PER COURT :

1. Heard learned counsel for both the sides finally.
2. The petitioner is challenging order dated 22.11.2022, passed below Exhibit 65 rejecting his application for framing additional issue pertaining to limitation.
3. The petitioners are original defendant nos. 1, 2 and 5. Respondent nos. 1 to 9 are plaintiffs who have filed RCS No. 92 of 2013 for partition and possession. The petitioners have filed written statement contesting the suit. On 17.01.2017, issues are settled which are at page no. 34. The petitioners submitted application Exhibit 65 seeking framing of additional issue pertaining to limitation. By impugned order application is rejected.

4. There is a statutory provision of Section 3 of the Limitation Act, prescribing that the issue of limitation has to be considered in any suit notwithstanding the defence set up. Learned Trial Judge lost sight of the provision which is an error apparent on the face of the record. Considering the pleadings of the parties, the additional issue proposed by application Exhibit 65, is necessary.

5. Impugned order below Exhibit 65 passed in RCS No. 92 of 2013, is quashed and set aside. Application Exhibit 65 stands allowed. Learned Civil Judge Junior Division, Ghansawangi, shall make an endeavor to decide RCS No. 92 of 2013 expeditiously within a period of eight months from today.

[SHAILESH P. BRAHME, J.]