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

WRIT PETITION NO.7129 OF 2019

Hamid Dhondu Waghu and Ors ... Petitioners
V/s.
Nazir Abdul Rehman Waghu & Ors ... Respondents

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Mr. Ashok B. Tajane a/w Mr. Yuvraj A. Tajane, for
petitioner.

Mr. Rajdeep Lahiri a/w Ms Sana Khan i/by Mr. Pramod
N. Tambe, for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2023

P.C.:

1. By this writ petition, under Article 227 of the Constitution of India, petitioners/original defendant Nos.1 to 7 are challenging order dated 2 April 2019 requesting the Trial Court to decide issue of jurisdiction and limitation as preliminary issue.

2. According to the petitioners, on 9 July 2012, this Court in Writ Petition No.3531 of 1989 passed a compromise decree. The plaintiff applied for recalling of decree, but the application was dismissed. According to them, plaintiffs, therefore filed suit challenging compromise decree dated 9 July 2002 on the ground that plaintiffs were not party to the compromise decree.

3. During pendency of suit issue of jurisdiction under Section 9A of the Code of Civil Procedure, 1908 was framed along with issue of limitation. Parties led evidence in the form of examination-in-chief. However, during cross-examination, by virtue of Code of Civil Procedure, 1908 (Maharashtra Amendment) Ordinance, 2018, Section 9A was deleted. The Trial Court, therefore, postponed adjudication on the issue of limitation and jurisdiction to be decided along with final disposal of the suit.

4. According to the petitioner, it was obligatory on the Trial Court to decide both issues as preliminary issues. However, in view of authoritative pronouncement of Apex Court in the case of **Ramesh Chandra Sankla Etc Versus Vikram Cement Etc.**, reported in (2008) SCC 58, the Civil Court needs to decide the issues at the time of final hearing. In my opinion, there is no error committed by the Trial Court. Hence, the writ petition is dismissed. No costs.

(AMIT BORKAR, J.)