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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 393 OF 2024
WITH
INTERIM APPLICATION NO. 9657 OF 2024
(NOT ON BOARD)
IN
SECOND APPEAL NO. 393 OF 2024**

Daji Natha Tippe Jadhav

.....Appellant

Vs.

Anant Panditrao Salgar and Ors

.....Respondents

Mr. Avinash Avhad a/w Mr. Sahil S. Ghule for the appellant

CORAM : GAURI GODSE, J.

DATE : 5th SEPTEMBER 2024

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ORDER:

1. Heard learned counsel for the parties. The second appeal raises the following substantial questions of law:

(i) Whether the suit could have been dismissed on the point of limitation by framing a preliminary issue under Rule 2 of Order XIV of Code of Civil Procedure, 1908 ('CPC')?

(ii) Whether the point of limitation in the present suit

being a mixed question of law and fact, the suit could have been rejected only by framing the preliminary issue on the point of limitation?

(iii) Whether the dismissal of the suit as barred by law of limitation decided by framing a preliminary issue under Order XIV Rule 2 of CPC is not permissible in view of the settled legal principles as laid down by the Apex Court in the case of **Nusli Neville Wadia Vs. Ivory Properties and Ors¹**.

2. Issue notice for final disposal on the aforesaid questions of law. Notice is made returnable on 27th November 2024.
3. Office is directed to issue notice alongwith copy of this order.
4. In addition to Court notice, learned advocate for the appellant shall serve the respondents alongwith copy of this order by private notice and file affidavit of service before the next date.
5. Learned advocate for the appellant shall file private paper-book before the next date.

¹ 2020 (6) SCC 557

INTERIM APPLICATION NO. 9657 OF 2024:

6. Issue notice to respondents. Notice is made returnable on 27th November 2024.
7. In addition to Court notice, learned advocate for the appellant shall serve the respondents alongwith copy of this order by private notice and file affidavit of service before the next date.
8. Till the next date, there will be ad-interim in terms of prayer clause (b).

[GAURI GODSE, J.]