

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 142 OF 2025**

Uttam Namdev Shewale and Ors. ... Appellants
vs.
Dyneshwar Nivrutti Shewale and Ors. ... Respondents

Mr. Avinash B. Avhad for the Appellants.

Mr. Swaraj M. Savant i/b Sujay H. Gangal for Respondent Nos.1
and 2.

CORAM : GAURI GODSE, J.

DATED : 11th MARCH 2025

ORDER :-

1. This appeal is preferred by defendant nos.1 to 3 to challenge the order passed by the first appellate court remanding the suit to the trial Court for framing all the issues and deciding the same alongwith the issue of limitation and res judicata.

2. The suit for partition and separate possession was dismissed on a preliminary point of limitation. Hence, the plaintiffs had filed first appeal. The first appellate court has remanded the suit to the trial court for hearing it afresh after framing all the issues. This order is challenged by defendant nos.1 to 3 in this appeal.

3. Learned counsel for the appellant submits that the plaintiffs had failed to lead any evidence on the issue that was framed by the trial Court. Hence, the trial Court by considering the evidence rightly decided the suit and dismissed the same as barred by limitation. He, therefore, submits that there was no reason for the first appellate court to remand the suit for deciding it afresh on all the issues including the issue of limitation.

4. I have perused the papers of the appeal. There is no dispute that the suit was dismissed only on a preliminary point of limitation. It is well established principle of law that the issue of limitation cannot be decided independently as the same involves mix question of facts and law. In the present appeal, the suit is filed for partition and separate possession. The objections raised on behalf of defendant no.3 was on the point of limitation and res judicata. The point of limitation and res judicata both would involve questions of facts and law. In view of Order XIV of Code of Civil Procedure, all the issues that arise based on the rival pleadings are required to be decided after framing all the issues.

5. I see no reason for deciding the suit only on the point of limitation. The first appellate court has, therefore, rightly reversed the trial Court's findings and directed the trial Court to hear the suit

afresh by framing all the issues including the issues of limitation and res judicata. There is no fault in the reasons recorded by the first appellate court.

6. The appeal is devoid of any merit. Hence, the appeal is dismissed.

(GAURI GODSE, J.)