

Jvs.

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

WRIT PETITION NO. 18358 OF 2024

JAYANT
VISHWANATH
SALUNKE

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Arun Bhagwant Daule & Ors. } Petitioners
versus
Prakash Bhagwant Daule & Anr. } Respondents

Mr. Harish R. Pawar with Mr. Shivam S.
Gawde for petitioners.

Mr. Sachin Thorat with Mr. Prajwal Thorat
and Mr. Pranav Borgave for respondents.

CORAM: ALOK ARADHE, C. J.

DATE: JULY 8, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the validity of the order dated 18th July 2024 passed by the Trial Court, by which the application preferred by the petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on the ground that it does not disclose cause of action and the same is barred by limitation, has been dismissed.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the plaintiffs have filed a suit seeking relief of declaration and partition. In the aforesaid civil suit, the petitioners filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, wherein it was stated that the plaintiffs had knowledge about the execution of the Will in the

year 2009, yet, relief of declaration that the same does not bind the respondents/plaintiffs, has been sought in the year 2023. It was pleaded in the application that the suit is based on illusory cause of action and barred by limitation.

3. The Trial Court, by the impugned order dated 18th July 2024, has rejected the aforesaid prayer, *inter alia*, on the ground that the issue of limitation is a mixed question of law and fact and the same shall be decided after recording evidence of the parties.

4. I have heard learned counsel for the parties at length.

5. From a perusal of the pleadings, it is evident that the plaint discloses cause of action and the issue of limitation, in the facts and circumstances of the case, is a mixed question of law and fact. Therefore, the Trial Court has rightly concluded that the objection preferred by the petitioners with regard to maintainability of the suit on the ground that the same is barred by limitation and it is based on illusory cause of action would be decided after recording evidence of the parties.

6. Therefore, no case for interference in exercise of jurisdiction under Article 227 of the Constitution of India is made out. The petition is disposed of with a direction to the Trial Court to frame an issue on the application under Order 7 Rule 11 with regard to maintainability of the suit and to decide the same without being influenced by the observations contained in the order dated 18th July 2024.

(CHIEF JUSTICE)