

SAINATH

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15818 OF 2025**

Veermatiben Jayendrasinh Chauhan and ..Petitioner
Anr.

Versus

Mr. Natwarsingh Ramsinh Chauhan ...Respondent

Mrs. Pratibha D. Shelake a/w Varsha Palav, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATE : 24th NOVEMBER 2025

P.C.:

1. Heard learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 08th October, 2025, passed by the learned Civil Judge, Senior Division, whereby an application preferred by the petitioner – Defendant No. 1 to try the issues No. 1, 8 & 9 framed by the Trial Court, by an order dated 14th November, 2016, as preliminary issues, came to be rejected.
3. The Respondent No. 1/plaintiff has instituted a suit for declaration that, the sale deed dated 02nd September, 2010 executed in favour of the defendant is illegal, forged, null and void, and the defendant has no lawful right, title and interest in,

or possession over, the suit property, and also for the consequential relief of injunction.

4. Issues were settled by the Trial Court on 14th November, 2016. *Inter alia*, issue of bar of limitation has been framed as Issue No. 8.

5. The learned Civil Judge was persuaded to reject the application for trying Issue Nos. 1, 8 and 9 as preliminary issues, as the application came to be preferred after the recording of evidence and at the fag end of the trial.

6. Learned Counsel for the petitioner submitted that, the issue of limitation goes to the root of the matter and ought to have been tried as a preliminary issue.

7. Evidently, the trial Court has recorded in clear and explicit terms that the trial in the suit is at the fag end and the trial is likely to be concluded soon. As the evidence of the parties has already been recorded, at this stage, there was no propriety in entertaining an application for deciding the Issue Nos. 1, 8 and 9 as preliminary issues and the Trial Court has rightly declined the prayer of the petitioner.

8. The learned Counsel for the petitioner has placed reliance on the judgment of Supreme Court in the case of **Sathyanath &**

Anr. Vs. Sarojamani¹, wherein the Supreme Court enunciated that, if the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision.

9. Suffice to note in view of the enunciation of law in the case of **Nusli Neville Wadia V/s. Ivory Properties**², the issue of limitation cannot be tried as a preliminary issue where it is dependent upon disputed question of facts. The observations of the Supreme Court in Para Nos. 52 read as under :-

“52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a

1 2022 7 SCC 644

2 (2020) 6 SCC 557

finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year, 1976.”

10. In view of the aforesaid enunciation of law and the advanced stage of the trial in the suit, the petition does not deserve to be entertained.

11. The petition stands dismissed.

[N. J. JAMADAR, J.]