

ORDER PASSED BELOW EXH.55

The present application moved by defendants for framing preliminary issue in respect of limitation. It is averred by the defendants that the present suit, plaintiff is seeking declaration with regard to cancellation of sale deed No.436/1995 dated 14.02.1995 and for cancellation of sale deed No.2299/2022 is not pending on her share.

02. It is further averred that in Miscellaneous Criminal Application No.206/2014 against defendant No.1, plaintiff referred sale deed dated 14.02.1995. Furthermore, revenue proceedings are already contested between plaintiff and defendant No.1 in respect of mutation entry on the basis of sale deed dated 14.02.1995. So, the plaintiff has knowledge in respect of sale deed dated 14.02.1995 *ab initio*. Therefore, instant suit is barred by limitation. Defendant urged for preliminary issue, as such, whether the suit is within limitation? Hence, defendants urged for framing preliminary issue and firstly enquiry of it. The ld. counsels for the defendants relied upon the judgment *Sukhbiri Devi & Ors. Vs. Union of India* of Hon'ble Supreme Court.

03. Per contra, plaintiff strongly opposed the instant application. She denied the whole contents of instant application in toto. She contended that present suit is for declaration and for injunction. The cause of action arose for instant suit in the last week of May, 2021. Defendants did not admit the averments of the plaint. The suit is well within limitation. Issue of limitation is mixed question of fact and law. Hence, instant application is not tenable and urged for rejection.

04. Perused the record. Both the ld. counsels of the plaintiff and defendants argued in consonance of their pleadings. After going through the record, it reveals that plaintiff asked to the defendant No.1 for reconveyance of sale deed dated 14.02.1995, to which defendant No.1 refused. The averments of plaint also shows the cause of action in the last week of the May, 2021. The instant suit is for declaration and for injunction. In view of Sukhbiri Devi & Ors. Vs. Union of India it is held that, statement in plaint capable of determining the starting point of limitation for the purpose of application of Order 14 Rule 2(2)(b). It is further held that, issue of limitation is mixed question of fact and law. So far as instant matter is concerned defendants did not admit the facts of plaint. So, herein issue of limitation is not solely question of law but herein mixed question of facts and issues which requires judicial evaluation. The issue of limitation is already framed. Therefore, it will be decided on merits. Therefore, I am not inclined to grant instant application. Hence, I pass the following order;

ORDER

1. The application Exh.45 is hereby rejected
2. No order as to cost.
3. Both the parties are hereby directed to proceed the matter expeditiously on merits.

Vita
Dated 13.04.2023.

M.Sharique A.U. Rahman,
Jt.Civil Judge Junior Division, Vita,
Tal.Khanapur, Dist.Sangli.

CERTIFICATE

I affirm that the contents of this PDF file are same as per the original.

Name of Stenographer	:-	S.V. Gaikwad
Name of the Court	:-	M.Sharique.A.U. Rahman, Jt.Civil Judge Jr. Dn., & J.M.F.C. Vita. Tal:-Khanapur.
Date of decision	:-	13.04.2023
Order signed by P.O. on	:-	13.04.2023
Order uploaded on	:-	15.04.2023.