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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION NO. 867 OF 2016  
IN  
SUIT NO. 154 OF 2015  
WITH  
NOTICE OF MOTION NO. 2271 OF 2016**

Ashan Alias Mansur Hasan Khan ...Plaintiff  
*Versus*  
Salim Hasan Khan & 4 Others ...Defendants

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**Mr. J.P. Sen, Senior Advocate, i/b Mr. Charles DeSouza & Ms. Mahima Sinha, for the Plaintiff.**  
**Mr. Dinyar Madon, Senior Advocate, with Mr. Atul Daga, Ms. Poorva Garg & Mr. Parikshit Barpujari, i/b Mulla & Mulla & CBC for Defendant No. 1/Applicant in NMS/867/2016.**  
**Ms. Soniya Putta, with Mr. Rahul Soman, i/b Solomon & Co., for Defendant No. 3.**

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**CORAM: G.S. PATEL, J**  
**DATED: 30th September 2016**

**PC:-**

1. This partition Suit raises an uncommonly intriguing question. The Plaintiff has filed a substantive Notice of Motion No. 2271 of 2016. The 1st Defendant, counter-attacking, has done two things simultaneously: he has taken the plea that the Suit is barred by

limitation as a preliminary issue under Section 9A of the Code of Civil Procedure, 1908 and he has also filed Notice of Motion No. 867 of 2016 for substantive reliefs.

2. Mr. Sen for the Plaintiff says that the 1st Defendant cannot do both: he cannot simultaneously say that the Suit is barred and seek substantive reliefs in the very Suit that he says is barred by limitation. The bar pleaded goes to the root of jurisdiction. Either this Court has the jurisdiction or it does not. If the 1st Defendant says it does not, then he cannot seek reliefs from the very Court that he says lacks the jurisdiction to hear the suit in the first place.

3. Mr. Madon for the 1st Defendant insists that this is not the stage for deciding any of this. He says he is entitled, so to speak, to hedge his position. If he succeeds on the limitation plea, then of course his Notice of Motion will fail. But if he does not succeed on the limitation plea, then he is surely entitled to maintain his Notice of Motion.

4. Both sides seek time to address the Court on this aspect of the matter. List the matter on 14th October 2016 on the supplementary board.

5. Parties are directed to complete service on all the Defendants.

**(G. S. PATEL, J.)**