

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 1237/2011
IA No. 1717/2011

Raj Kumari & Ors.

.....Petitioner(s)

Through: Mr. Surinder Singh, Advocate.

Vs

Savitri Devi

..... Respondent(s)

Through: None.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

**ORDER
(16.10.2024)**

- 01.** Petitioners through the medium of this petition seek quashment of order dated 09.08.2011 passed by the Court of learned Munsiff Katra (*hereinafter referred to as the, “**trial Court**”*), whereby the application filed by Gian Singh (*hereinafter called, “**plaintiff**”*) for deciding the issue of limitation alongwith other issues, was dismissed.
- 02.** It has been pleaded that the plaintiff had come to know about the Will Deed executed by Wazir Baij Nath on 2.04.1993 in his favour, which was registered by the Sub-Registrar concerned, after the demise of said Wazir Baij Nath on 12.07.2000, as such, the plaintiff had inherited all the properties left by the deceased-Wazir Baij Nath.

03. Notice was sent to the respondent for service, however, despite deemed service, she did not appear and was proceeded ex-parte vide order 10.03.2023. As such, the respondent has not contested this application.
04. Learned counsel for the petitioners submits that the trial Court has casually decided the application moved by the plaintiff with the submission that the issue of limitation be not decided as a legal issue, as the same is an issue having mixed question of law and facts. However, the trial Court without application of mind decided his application, holding that the issue of limitation is to be decided as a legal issue and treated the same as a preliminary issue, rejecting the application of the plaintiff. He has relied upon the judgment passed by this Court in a case titled, "**Ali Dar & Anr. Vs. Rajab Dar & Anr.**", reported as 2013 (1) SriLJ 161", wherein it has been held that the issue of limitation being mixed question of law would require to be decided alongwith other issues and also relied upon the judgment of the Hon'ble Apex Court passed in case titled, "**Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar**", reported as 2018 AIR (SC) 2447", wherein the Hon'ble Apex Court has held that the issue with regard to limitation is a triable issue, having regard to the disputed questions.
05. In view of the judgments cited and relied upon by the learned counsel for the petitioners and also keeping in view

the facts and circumstances of the case, this Court is of the considered view that the trial Court has passed the impugned order in a casual manner without application of mind and is not sustainable. The question of limitation has to be decided, from the date of knowledge of a fact, which can be decided only, after consideration of the evidence in this behalf. The trial Court instead of treating the issue of limitation as preliminary issue, being legal, should have treated the same as main issue to be decided, being mixed question of facts and law. The impugned order is, thus, set aside, with a direction to the trial Court to proceed in the matter, by treating the issue of limitation not as preliminary issue.

06. Petition is, accordingly, ***disposed of***, alongwith connected application.

(M A CHOWDHARY)
JUDGE

JAMMU
16.10.2024
Ram Krishan

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No