

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.5714 OF 2014

Shivaji s/o Shahadeo Bargaje,
Age 43 years, Occu. Agri.,
R/o Gomalwada, Taluka Shirur
(Kasar), District Beed

..Petitioner
(Orig.Defendant No.1)

Versus

1. Shahadeo @ Sahadeo
s/o Natha Bargaje,
R/o Gomalwada,
Taluka Shirur (Kasar),
District Beed
2. Tulsabai w/o Shahadeo
Bargaje,
Age 65 years, Occu. Agri.
and Household
R/o As above

..Respondents
(Orig. Plaintiffs)

Mr A.N. Nagargoje, Advocate for petitioner
Mr R.P. Dhase, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 17th March 2015

PER COURT

1. The order passed below Exh.63, an application for amendment in Regular Civil Suit No.43 of 2010 by Civil Judge, Junior Division, Shirur Kasar on 18th March 2014, is a subject matter of challenge, whereby the application for amendment preferred by the plaintiffs came to be granted.

2. Mr Nagargoje, learned Counsel for the petitioner would urge that the claim which is sought to be inserted by way of amendment is

a time barred claim and as such, the Court below should not have granted the same without examining the said issue.

3. Whereas, learned Counsel for the respondents-plaintiffs submits that the said issue as regards limitation can be gone into by the Court below at an appropriate stage, if the objection to that effect is brought to the notice of Court below. According to him, the amendment that was sought to be made, was based on the subsequent developments which took place after filing of the suit.

4. Having considered the rival contentions of the parties, it is noticed that the Court below has exercised its discretion based on the reasons, which appears to be germane to the cause. The trial has not taken effective momentum. As such, the said issue which is sought to be raised for the first time before this Court as regards limitation, can be gone into by the Court below at an appropriate stage in the suit.

5. The petitioner-defendant shall have every right to raise the said issue as regards the limitation before the Court below at an appropriate time.

6. With these observations and by enhancing the amount of costs from Rs.500/- to Rs.3,000/-, to be deposited before Court below within two weeks from today, to be withdrawn by the petitioner, writ petition stands disposed of.

(N.W. SAMBRE, J.)

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