

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9243 OF 2011

Laxman Mahadeo Mali

.. Petitioner

Versus

Mahadeo Babu Mali and others

.. Respondents

Mr. V. B. Rajure, Advocate for the Petitioner.

Mr. Amit B. Borkar, Advocate for the Defendants No.1, 3, 9 & 10.

CORAM : R.M. SAVANT, J.

DATE : 08th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 30th June, 2011 passed by the Learned 12th Joint Civil Judge, Junior Division, Kolhapur by which order the application Exh.80 for amendment of the plaint came to be rejected. The amendment in the plaint was sought so as to incorporate a challenge to the Sale Deed bearing No.2636 of 2007 dated 22.05.2007. The suit is question has been filed by the Petitioner seeking partition of the suit properties. In so far as the said Sale Deed is concerned, the same has been executed by the Defendant No.1 in favour of his son and daughter-in-law. The said Sale Deed was placed on record along with the written statement by the Defendants on 26.09.2007 with list Exh.34 of the list of documents. The Trial Court having regard to the

said fact came to a conclusion that the amendment application moved in the year 2011 and the case sought to be incorporated therein by virtue of the said amendment was barred by Section 58 of the Limitation Act as the Plaintiff was required to seek a declaration within three years of the execution of the said Sale Deed. The Trial Court has relied upon the judgments of the Apex Court as well as this Court holding that the amendment which is ex-facie barred need not be allowed. In the instant case, as indicated above, the Sale Deed in question was placed on record vide list of documents Exh.34 on 26.09.2007 and therefore, knowledge of the said Sale Deed is required to be attributed to the Plaintiff since the said date and the case of the Plaintiff that he has acquired knowledge later on therefore, cannot be countenanced. The Trial Court was therefore, right in observing that the amendment challenging the Sale Deed after a period of four years was barred by limitation. There is no error of jurisdiction or any illegality or infirmity for this Court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]