

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

WRIT PETITION NO. 8746 OF 2016

Ajeet Jagannath Khandare

..PETITIONER

VERSUS

Narandra Vinaykumar Gandhi and Another

..RESPONDENTS

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Mr. A.N. Sabnis, Advocate a/w Mr. N.L. Choudhari, Advocate for petitioner.

Mr. V.S. Tandale, Advocate for respondents.

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**CORAM : T.V. NALAWADE, J.
DATED : 06th DECEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made by Civil Judge, Senior Division, Osmanabad on Exhibit 56 filed in Regular Civil Suit No. 123 of 2011. Both sides are heard.

2. The suit is filed by present petitioner for relief of injunction. It is his case that on 18th January, 2011, the defendant executed agreement of sale in his favour and agreed to sell immovable property – agricultural land as described in the suit. The suit was filed to prevent the defendants from making any transaction in respect of this land in favour of third party. The defendants filed written statement and contended that he had

canceled the agreement by giving notice to plaintiff on 12th March, 2011. This written statement was filed on 12th July, 2011. Thus it is not disputed that in notice dated 12th March, 2011, the defendant had refused to perform his part and he had informed that he has canceled the agreement and this written statement was filed on 12th July, 2011.

3. The application for permission to amend the plaint came to be filed on 23rd November, 2015. This application was opposed by defendants by contending that the claim itself was not in limitation. After hearing both the sides, the Trial Court has held that the claim itself is not within limitation and so such amendment cannot be allowed. Article 54 of the Limitation Act shows that the time starts to run when the plaintiff has noticed that performance is refused and from the date of knowledge of plaintiff that performance is refused, time of three years needs to be counted.

4. Learned Counsel for respondents – defendants placed reliance on cases reported as *AIR 1996 SC 2358 (Radhika Devi Vs. Bajrangi Singh and Others)* and *1995 Supp (3) SCC 17 (K. Raheja Constructions Ltd. and Another Vs. Alliance Ministries and Others)*. In the first matter, by making amendment the plaintiff wanted to seek

declaration that gift deed was obtained illegally and fraudulently and it is not binding. In view of the facts of that case this Court held that on the date of application filed for amendment, relief itself was barred due to law of limitation and so such amendment was not permissible. So far as the second case is concerned, the suit was filed for relief of injunction to prevent the owner from selling the property and then after three years application for amendment was moved to make suit for specific performance of contract. In similar circumstances by referring Article 54 of the Limitation Act, the Apex Court held that such amendment cannot allowed.

5. On the other hand, learned Counsel for petitioner placed reliance on some observations made by the Apex Court in the case reported as *(2015) 11 SCC 12 (Inbasagaran and Another Vs. S. Natarajan (Dead) Through L.Rs.)*. This case is altogether on different point. The suit was for relief of injunction and then separate suit was filed for relief of specific performance of contract. The Apex Court held that separate suits was quite different and would not attract the provision of Order 2 Rule 2 of Code of Civil Procedure. The point of limitation was not at all involved like in the present matter. When plaintiff wants to amend the plaint to make the suit for specific performance of contract, the

application itself becomes a claim and it becomes necessary for Court to decide as to whether such claim can be entertained on the date on which the application for amendment was filed. In view of this position of law, this Court holds that the observations made in the case on which reliance is placed, is of no use. Reliance was placed on another case reported as **(2006) 4 SCC 385 (Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others)**. The learned Counsel for petitioner took this Court through paragraph nos. 18 and 19 of the said case. The observations are with regard to the different context and the Apex Court has laid down that if party wants to bring on record the real dispute then the Court should in ordinary course allow the party to mention such real dispute in the pleadings. There is no dispute over this proposition. In the present matter, the plaintiff wants to make suit for another relief which is barred by law of limitation.

6. In view of the aforesaid circumstances, this Court holds it is not possible to interfere in the order made by the Trial Court. Petition is dismissed.

(T.V. NALAWADE, J.)

SSD