

Sequeira

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

WRIT PETITION NO. 1902 OF 2016

Shri Namdeo Krushna Ghadage

Since deceased, through L.R.s

1a. Arun Namdeo Ghadage & anr. .. Petitioners

Vs.

Shri Ramu Shankar Ghadage

Since deceased, through L.R.s

1a. Smt.Bukabai Ramchandra

Ghadage & ors.

.. Respondents

Mr. Graham Francis i/b Mr. V. S.Talkute, for Petitioners.

Mr.Surel Shah, for Respondent Nos.1a to 1g.

***CORAM : N.M.Jamdar, J.
Friday, 16 September 2016.***

P.C. :

Heard learned counsel for the parties.

2. By the impugned order dated 18 March 2015, the application for amendment filed by the Petitioner-Plaintiff has been rejected. By way of an amendment, the Petitioner-Plaintiff sought to incorporate averments seeking a declaration that in view of the Sale deed dated 25 February 1955 executed by one Bhagubai Ghadage, the

Petitioners have become owners and those rights have not yet been extinguished. This amendment as sought for in the plaint has been rejected by the learned Civil Judge holding that the reason given by the Petitioners that the amendment could not be incorporated through oversight was not cogent and the amendment would change the nature of the suit.

3. It appears that the learned Civil Judge has not noted that there are certain averments in the plaint regarding the Sale deed. Issues that have been re-casted also refer to the question of ownership by way of Sale deed therefore, it cannot be said that the entire case is sought to be changed by the Petitioners. As regards the question whether the Petitioners are entitled to the relief based on the Sale deed including the question of limitation for asking such reliefs, are matters of merits to be adjudicated at the time of trial. No prejudice will be caused to the Respondents if the issue of limitation as well as the issue whether the amendment would relate back to the institution of the suit, are kept open to be adjudicated at the time of trial. In view of this clarification, there is no reason not to permit the Petitioners to carry out the amendment in the plaint. The impugned order dated 18 March 2015 is quashed and set aside. The Application filed by the Petitioners below Exhibit no.145 in Civil Suit No.349 of 1982 pending on the file of the learned Civil Judge, Pandharpur is allowed. Amendment to be carried out within period

of four weeks from today.

4. It is clarified that the issue of limitation as well as whether the amendment would relate back to the date of the suit and merits of the amended portion, are kept open. It is open to the Respondents to file additional written statement in respect of the amended portion. Considering the fact that the suit is of the year 1982, if there are no other earlier suits pending, or there are no earlier time bound commitments, the learned Civil Judge, Pandharpur will take up the present suit for consideration immediately and make an endeavour to dispose of the same within period of six months from the date of the order. Both parties will cooperate with the learned Civil Judge for early disposal of the suit and will not take needless adjournment as the dispute between the parties already stands crystalised in the form of re-casted issues.

(N.M.Jamdar, J.)