

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 824 OF 2016**

Dattaram Govind Ambre

..Petitioner

Vs

Sakharam Bhiku Shinde, since
deceased through L.Rs.

.. Respondents

Mr. Sumit S. Kothari, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 28/01/2016

PC:

1. Heard Mr. Sumit Kothari, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 25.6.2015 below Exh.117 and order dated 9.9.2015 below Exh.125 in Regular Civil Suit No.38 of 1995 passed by the learned Civil Judge, Jr. Dn., Khed. By order dated 25.6.2015, the learned trial Judge rejected the application Exh.117 made by the defendant for amending the written statement. By order dated 9.9.2015 below Exh.125, the learned trial Judge partly allowed the application Exh.125 made by the defendant and framed additional issue as to whether the suit is within the limitation.
3. Mr. Kothari submitted that respondent no.1- Sakharam Bhiku Shinde, since deceased, had instituted suit for declaration

that the power of attorney and sale deed dated 1.10.1986 is illegal, null and void and is not binding on the plaintiff; for cancellation of the power of attorney and sale deed dated 1.10.1986 and for mandatory injunction directing the defendant to demolish the construction and restored original position of survey no.65, Hissa no.2A/1 and for possession of the said property. The defendant resisted the suit by filing written statement dated 18.3.1986 at Exh.15. On 25.7.2015, the defendant took out application Exh.117 for amending written statement so as to incorporate the plea that having regard to provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "Act"), Civil Court has no jurisdiction and the suit is liable to be dismissed. The defendant also intended to incorporate, after paragraph 16 the plea of limitation. By the order dated 25.6.2015, the learned trial Judge rejected the application, Exhibit 117, on the ground that the subject matter of the suit has no bearing with the provisions of the Act. The present application is made after 19 years. The learned trial Judge was also of the view that the proposed amendment is not necessary for deciding the real controversy between the parties as essentially the prayer for the plaintiff is for cancellation of the sale deed as also for declaration that the said sale deed is not binding on him.

4. As far as the order dated 19.9.2015 below Exh.125 is concerned, the learned trial Judge framed additional issue of limitation. Thus, the application Exh.125 is partly allowed. In addition to this issue, the defendant wanted trial Court to frame issue as to whether civil court has jurisdiction to entertain and try the suit and whether the suit is premature. The learned trial Judge observed that issues no. 2 and 3 are contrary to each other and that the present application is taken out after 19 years. As far as issue no.1 is concerned, the defendant should have raised the objection as to jurisdiction at the earliest available opportunity as per section 21 of C.P.C.

5. After considering the submissions of Mr. Kothari and after perusing the reasons given by the learned trial Judge, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India, Hence, Petition fails and the same is dismissed.

6. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)