

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

WRIT PETITION NO. 6911 OF 2016

Tanoj s/o. Nagnath Zadpide .. Petitioner
Age/ 23 years, Occ. Pujari,
R/o. Shukrawar Peth, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.

Versus

1. Kusumbai w/o. Nagnath Kanakdhar .. Respondents
Age. 68 years, Occ. Household,
R/o. Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.
2. Saraswatibai w/o. Ganpatrao Fadkari
Age. 63 years, Occ. Household,
R/o. Kaman Wes Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.
3. Shubham s/o. Nagnath Zadpide
Age. 17 years, (Minor)
Under guardianship of his real mother
Shaila w/o. Nagnath Zadpide
Age. 39 years, Occ. Pujari,
R/o. Shukrawar Peth, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.

Mr.K.K. Kulkarni, Advocate for the petitioner.
Mr.V.C. Solshe, Advocate for respondent No.1.

**CORAM : S.B. SHUKRE, J.
DATED : 21.03.2017**

ORAL JUDGMENT :-

1. Heard learned Counsel for the petitioner and learned Counsel for respondent No.1, who is the contesting party. None appears for respondent Nos.2 & 3.

2. Rule. Rule made returnable forthwith and heard finally by consent.

3. There is no principle in existence to be applied by way of straight jacket formula that the issue of limitation while allowing the amendment of pleadings must be decided then and there only. Such question, depending upon facts and circumstances can be decided at the time of allowing amendment application or can also be kept for deciding at appropriate stage. In this view of the matter, I am of the view that the purpose of this petition would be served by modifying the impugned order dated 19.01.2015 and now the impugned order shall be as under :-

“The application vide Exh.56 is allowed but the amendments which are allowed to be made to the plaint shall not relate back to the date of suit and shall take effect from the date on which the amendments are actually carried out and that the issue of bar of amendment by law of limitation

is kept open, which shall be decided appropriately at appropriate stage by the Trial Court."

4. The impugned order stands modified accordingly. In view of above, the challenge made to order passed below Exh.79 does not survive. The writ petition is partly allowed with costs. Rule made absolute in these terms. No costs.

[S.B. SHUKRE,J.]