

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7671 OF 2014

Mrs.Pushpalata Tamhane & Anr.. .. Petitioners
Vs.
Mr. Jaisingh Bhagwan Chandere & Ors. ... Respondents

Mr.Chaitanya Nikte a/w Mr. Anil Nagargoje, for the petitioners
Mr.Jaydeep Deo, for the respondents Nos. 1 to 8.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 7th November, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The present petitioners happen to be the defendants in Civil Suit No.1293 of 2004. The petitioners had filed written statement and has specifically contended that the suit is barred by limitation. The petitioners herein had filed an application seeking amendment to the written statement to demonstrate as to how the suit was bared by limitation. The said application for amendment of written statement has been rejected by order dated 7.4.2014. Hence, the present petition.

3. The learned Addl. Judge, Court of Small Causes, Pune, while deciding the said application has held that the suit is filed on 10th December

2004. The issues were framed on 5.7.2010 and 19.12.2012. The matter was fixed for evidence. The examination-in-chief of the original plaintiff was recorded and at the stage of cross-examination, an application was filed seeking amendment to the written statement. Needless to say that the issue of limitation was already framed by the learned Court.

4. The learned counsel for the petitioners rightly submits that an issue of limitation is a mixed issue of facts and law and therefore, it was necessary to amend the written statement to give better particulars as to how the plaintiff had knowledge about the sale deed. In any case, once the issue is framed, it would not be necessary to give better particulars at a subsequent stage. Suffice it to say that the defendant would be at liberty to adduce evidence on the basis of records and oral submissions and by way of cross-examination as to how the suit is barred by limitation. The suit is of the year 2004. It has been pending for almost a decade and at this stage, it would not be necessary to amend the written statement and the learned Judge can proceed with the same and the rights of the petitioners to adduce evidence in respect of the issue of limitation.

5. Taking into consideration the fact that the suit is of the year 2004 and the present petition is pending in this Court since 2004, it would be necessary to expedite the proceedings in the suit. The proceedings are

accordingly expedited. The learned Court is requested to dispose of the suit by recording evidence in the proceedings as far as possible by 30.5.2018. The Petition is disposed of. Rule is discharged.

[SMT. SADHANA S.JADHAV, J.]