

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

WRIT PETITION NO.598 OF 2017

Shri Hiralal Trimbak Shelar & Anr.

...Petitioners

vs.

Shri Raghunath Namdeo Dusane & Ors.

...Respondents

Mr. M. N. Sandhyanshiv for the Petitioners.

CORAM : R.G.KETKAR, J.

DATE : 23rd FEBRUARY 2017.

P.C.:

. Not on board. At the request of Mr. M.N. Sandhyanshiv, learned counsel for the Petitioners, taken in the production board.

2. Heard Mr. Sandhyanshiv for the Petitioners at length.

3. By this petition, under Article 227 of the Constitution of India, the Petitioners have challenged the judgment and order dated 5/11/2016 passed by the learned Civil Judge, Senior Division at Malegaon, Dist. Nashik below Exh.110 in Special Civil Suit No.122 of 2007.

4. By that order the learned Trial Judge allowed an application made by the plaintiff under Rule-17 of Order-VI of Code of Civil Procedure, 1908 for amending the plaint, for incorporating the prayer for compensation of Rs.30 Lakhs along with interest of 18% p.a.

5. In support of his petition, Mr. Sandhyanshiv contended that the application for amendment is moved nearly after 9 years from the filing of the suit. No sufficient cause is made out for filing an Application after 9 years. In fact, the plaintiff ought to have filed the

application within 3 years from 2007. He submitted that the claim made by the plaintiff is also barred by limitation.

6. While allowing the application, learned Trial Judge has referred to sub-section 5 of Section 21 of the Specific Relief Act, 1963.

"21.(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

7. In view thereof, I do not find that the learned Trial Judge committed any error in allowing the application. Hence, petition fails and the same is dismissed.

8. 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.)