

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

WRIT PETITION NO. 9619 OF 2018

**NAMDEO GYANOBA KAKADE DIED AND OTHERS
VERSUS
MOKSHADA NAMDEO KAKADE**

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Advocate for the Petitioners : Shri N. J. Patil
Advocate for the Respondent : Shri S. S. Jadhavar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 01st NOVEMBER, 2018.

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PER COURT :

1. The petitioners/original defendants are aggrieved with the grant of amendment by order dated 23/04/2018, by which, application Exhibit 145, filed by the plaintiff seeking to introduce a prayer for declaration to the extent of her half share in the suit land and for a further declaration that the sale-deed is not binding upon the plaintiff to the extent of her half share, has been allowed.

2. Though I have heard the learned Advocates for the respective sides on the merits of the matter, I find that the impugned order cannot be faulted for the reasons assigned by

the Trial Court in paragraph No. 6 of the impugned order which is based on the pleadings of the parties and the contentions noted in paragraph Nos. 3 to 5 of the impugned order.

3. However, this petition needs to be considered on the aspect of limitation. There is no dispute that the limitation period is of three years for seeking a declaration as against the sale-deed. This issue would naturally crop up as the defendants are before this Court contending that though the Trial Court has granted the amendment, it has not looked into the aspect of limitation.

4. Considering the above, this petition is disposed off with liberty to the petitioners to file their written statement for opposing the amended portion of the plaint, on or before 30/11/2018.

5. The Trial Court would thereafter frame an issue of limitation as the prayer for declaration, which is granted by way of an amendment, will have to be construed from the date

of the application Exhibit 145. If required, the parties may lead evidence on the additional issue framed and thereafter the Trial Court would consider all the issues while deciding the suit.

(RAVINDRA V. GHUGE, J.)

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