

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

WRIT PETITION NO. 9046 OF 2019

**SUNANDA SAHEBRAO WAGHCHAURE
VERSIS
BHAUSAHEB YADAV PACHARANE**

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Advocate for the petitioner : Shri P. S. Pawar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th JULY, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 16/03/2019 passed by the Trial Court, vide which, application Exhibit 128 filed by the petitioner plaintiff seeking amendment to the plaint in Regular Civil Suit No. 741/2012, has been rejected.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order and submits that the order is perverse and erroneous. The suit is for partition and separate possession. The plaintiff claims an undivided 1/5th share and its possession. It is also prayed that the relinquishment document dated 29/11/2011 be declared as illegal and not

binding on the plaintiff.

3. By the written statement filed by the defendant on 09/12/2014, it was brought on record that the defendants have acquired their right on the basis of a registered sale-deed dated 19/11/2011. Though this aspect was brought on record, the plaintiff has moved Exhibit 128 on 22/02/2019. It is canvassed that an amendment is permitted at any stage and though the recording of oral evidence has concluded, the plaintiff can seek an amendment at any point in time.

4. It is conceded by the plaintiff that she does not desire to challenge the sale-deed dated 19/11/2011. She is not seeking any relief as against the said sale-deed. She has not prayed for a declaration that the sale-deed is illegal or void or is not binding on her. So also, there is no dispute that, assuming that the plaintiff is unaware of the sale-deed, this was brought to the notice of the plaintiff through the written statement at Exhibit 63 filed on 09/12/2014 by one of the defendants.

5. Issue is as to whether the said amendment is necessary.

It is crystalized law that the merits of the proposed amendment are not to be assessed by a court while considering an application for amendment. However, the Honourable Apex Court has settled certain principles on the law of amendment in the matter of *M/s Revajeetu Builders & Developers Versus Narayanaswamy & Sons & Others, AIR 2009 SC (Supp) 2897*. It is held that if any cause of action is otherwise barred by the law of limitation and a separate suit would not be maintainable owing to such a bar, such cause of action cannot be introduced through an amendment.

6. In the instant case, the plaintiff has proposed paragraph 7B by way of an amendment only to contend that the sale-deed dated 19/11/2011 is illegal and the sale of land under the said sale-deed is illegal. No prayer is put forth seeking a declaration that the said sale-deed be declared as void or not binding upon the plaintiff. If any relief is sought against the said sale-deed or if a declaration is sought to nullify its effect, the limitation is three years from the date the right to sue has first accrued.

7. Assuming that the plaintiff was unaware of the sale-deed and which was brought to her notice through the written statement on 09/12/2014, any challenge to the said sale-deed would now be barred by limitation.

8. In the light of the above, when the plaintiff does not desire to challenge the sale-deed or seek any declaration or any relief based thereon, there is no necessity for seeking such an amendment. The defendants have dealt with the said sale-deed, evidence of the litigating sides has been recorded and the recording of oral evidence has already concluded. When the said sale-deed is not going to impact the right of the plaintiff, I do not find that the Trial Court has committed any error in refusing such amendment.

9. In view of the above, this petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-