

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

WRIT PETITION NO.10291 OF 2019

SAGAR SUNIL GAIKWAD AND ANOTHER
VERSUS
NANA BABAN ALIAS SITARAM GAIKWAD AND OTHERS

...
Advocate for the Petitioners : Shri Rode Dilip B.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st August, 2019

Per Court:

1 The petitioners/ original defendant nos.3 and 5 in RCS No.264/2009, are aggrieved by the order dated 17.06.2019 passed by the Trial Court by which, their application exhibit 147 has been partly allowed. They are permitted to file their written statement, but the prayer to file the counter claim is rejected.

2 These two petitioners were minors when the suit was lodged and were represented by defendant no.2, who is their biological mother. She did not file the written statement and the suit proceeded ex-parte. After these two petitioners attained the age of 18 years, they moved the application exhibit 147 seeking leave to file the written statement as well as the counter claim. By the impugned order, "no w.s." order dated 06.04.2012 is set aside, however, leave to file the counter claim is not

granted on the ground that these defendants intend to raise the claim against the co-defendants.

3 I have perused the proposed counter claim and I find that the petitioners/ defendants are seeking a declaration that the sale deed dated 19.08.1991 in between defendant nos.11 to 15 be declared as null and void and not binding on these petitioners. So also, a declaration is sought that the sale deed dated 26.09.2000 in between defendant nos.11 and 14 to 16, is null and void.

4 In view of the above, I do not find that the impugned order of the Trial Court refusing to grant leave to file the counter claim, could be branded as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

5 Needless to state, if the petitioners/ defendants have any grievance about the acts of the co-defendants or the sale deeds, they would be at liberty to take recourse to such remedy as may be permissible in law subject to the Limitation Act, 1963.