

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

6 WRIT PETITION NO.13400 OF 2018

PRATAPSINGH BHAGWAN PARDESHI
VERSUS
BHAGWAN BHIKA PARDESHI DIED LRS

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Advocate for Petitioner : Shri Bhapkar S.B.
Advocate for Respondents 2, 3 & 6 : Shri Gholap A.M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 15, 2019

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PER COURT :-

1. Learned Advocate for the petitioner / plaintiff, on instructions, desires to delete respondents 5B and 5D from this petition.
2. Deletion is granted at the risk of the petitioner. Deletion to be carried out forthwith.
3. The petitioner is aggrieved by the order dated 20.8.2018, passed by the trial Court, by which, application Exhibit 208 seeking amendment to the plaint in RCS No.63 of 1992, has been rejected on the ground that a belated claim is being putforth by way of an amendment in the suit after a period of 26 years.
4. The petitioner / plaintiff desires to challenge the will deed dated 26.9.1991, executed by his father Bhagwan, who died on 25.1.1992. The suit was filed on 18.6.1992. The written statement was filed by the concerned defendants and the plaintiff was made aware that there is a

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will deed executed by Bhagwan on 26.9.1991. Defendants 2 to 6 are the sons of deceased Bhagwan, who was arrayed as defendant No.1. Despite the written statement making it known to the plaintiff that the will deed has been executed and though the petitioner / plaintiff is also the son of Bhagwan, no steps were taken to challenge the will deed, either through an amendment or by filing a separate suit, considering that the limitation period is of only three years from the date of the knowledge of the will deed.

5. In view of the above, I do not find that the trial Court has committed any error in rejecting application Exhibit 208, in view of the law laid down by the Honourable Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 10 SCC 84 = 2009 (8) MLJ 907- (SC)], in which, it is concluded that a cause of action which is otherwise barred by limitation and cannot be a subject matter of a fresh suit, shall not be a cause of action to be introduced by way of an amendment.

6. This petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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