

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1791 OF 2017

Kalgonda @ Shashikant
Balgonda Patil .. Petitioner
vs.
Suresh B. Patil and ors. .. Respondents

Mr. S.S. Koregave for the Petitioner.
Mr. P.P. Kulkarni for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 29 MARCH 2019.

ORAL JUDGMENT :-

1] Heard Mr. S.S. Koregave for the petitioner and Mr. P.P. Kulkarni for respondent No.1.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 18th July 2016 made by the learned Trial Judge allowing the respondent- plaintiff to amend the plaint.

4] Mr. Koregave, learned counsel for the petitioner, submits that the proposed amendment seeks to challenge the Deed dated 8th September 2011. However, the amendment

application was filed only in the year 2015. He submits that the challenge by this date was clearly barred by law of limitation. He submits that this aspect has not been considered or in any case not been considered in the proper perspective by the learned Trial Judge.

5] The learned counsel for the respondent No.1-plaintiff defends the impugned order on the basis of reasoning reflected therein.

6] This is a case of pre-trial amendment. Leave to amend at the pre-trial stage can always be granted subject to well settled principles in relation to grant or refusal of amendments.

7] Insofar as the issue of limitation is concerned, such issue can always be kept open to be decided along with all other issues which arise in the suit. Merely because leave to amend is granted that does not mean that the issue of limitation is not to be taken out for consideration.

8] Accordingly, the impugned order is modified and it is made clear that though leave to amend is granted, the issue of limitation is specifically kept open. Such issue will have to be framed in the suit and decided along with all other issues which arise in the suit.

9] With aforesaid clarification, this petition is disposed of. Rule is made partly absolute. There shall be no order as to costs.

10] In the peculiar facts of the present case, at the request of Mr. Koregave, liberty is granted to the petitioner to file a written statement to the amended plaint within a period of four weeks from today. If no such written statement is filed within four weeks from today, then, the petitioner shall forfeit the rights to file written statement.

11] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)