

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10425 OF 2019

Mohan Dattatray Surve ... Petitioner
Vs.
Maruti Ganpat Surve and Ors. ... Respondents
.....
Mr. Prasad P. Kulkarni for the Petitioner.
.....

CORAM : M. S. KARNIK, J.
DATE : 26th SEPTEMBER, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned counsel for the petitioner.
3. The petitioner is the original plaintiff. By this petition the plaintiff is challenging the order passed below Exhibit 149 passed by the Trial Court allowing the application made by the defendant Nos.1 to 4 for amendment of the written statement filed by them. By the proposed amendment the defendant Nos.1 to 4 prayed that some of the properties which are Joint Hindu Family properties are required to be included for the purpose of partition. The same remained to be included. In the application it was also prayed that the defendants be permitted to amend

their written statement by way of filing the counter claim. This was permitted by the Trial Court.

4. Learned counsel for the petitioner raised an objection to the maintainability of the counter claim. He would further submit that the amendment sought is hopelessly belated and barred by Law of Limitation.

5. In my opinion, as the Trial Court has allowed the application for amending the written statement filed by defendant Nos.1 to 4, there is reason to interfere with the order passed. However, the objection of the plaintiff as to the maintainability of the counter claim and that the amendment is barred by law of limitation is kept open to be decided by the Trial Court. As the suit is of the year 2001, the Trial Court is requested to hear and decide the suit expeditiously and preferably within a period of one year from today.

6. The petition is rejected with no order as to costs.

(M. S. KARNIK, J.)