

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5140 OF 2015

M/s. Shreyas Builders

...Petitioner

vs.

1. Smt. Hansaben Balkrishna Mehta & Ors.

...Respondents

Mr. Sandesh Patil a/w. Ms. Anusha Amin, for the Petitioner
Mr. Manish Gitay, for Respondent Nos.2 to 5.

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

1. Heard Mr. Patil for the petitioner.
2. Challenge in this petition is to the order dated 25/3/2015 by which the Ld. District Judge has permitted the appellant to amend the memo of appeal and to implead the additional parties.
3. Admittedly, the persons who have been directed to implead in the appeal have not challenged the impugned order dated 25/3/2015. This challenge is raised by the original respondents inter alia on the ground that such leave should not have been granted, since the Ld. Trial Judge has already held that the suit itself is barred by limitation.

4. Mr. Patil, Ld. Counsel for the petitioner relied on ***Hari Singh Vs. Padmavati Arts Creation Pvt. Ltd. AIR 2014 RAJ 186*** to contend that the suit is found to be barred by limitation, application seeking impleadment as plaintiff and claiming better pre-emptory right is not permissible as it would amount to reviving suit which is otherwise barred by limitation. Mr. Patil submits that on this ground the impugned order is required to be set aside and it is allowed.

5. In the present case, the appeal pending before the Appeal Court as against the order made by the Ld. Trial Judge under Section 9(A) of CPC holding that suit was barred by limitation. The appeal is continuation of the suit. Therefore, issue as to whether the suit was indeed barred by limitation or not has, till date, not attained any finality.

6. In the aforesaid circumstances, the decision in Hari Singh (Supra) is not at all applicable and in any case was clearly distinguishable. This is not a case where the original plaintiff seeks his replacement by some other plaintiff claiming better title. The facts in the case of Hari Singh (Supra) are not at all comparable with the facts of the present case.

7. By the impugned order, the Appeal Court has permitted

amendment to the memo of appeal by addition of certain grounds. However, since it was pointed out that pending the appeal some third party rights is created by the defendant, even the said third parties are ordered to be impleaded as parties in the appeal. Such impleadment is, in fact, in the interests of third parties and therefore the third parties have not even chosen to challenge such impleadment. Third parties will now get an opportunity to urge that the suit was barred by limitation and therefore, the appeal itself should be dismissed.

8. There is absolutely no jurisdictional error in the view taken by the Trial Court. Accordingly, no case is made out to interfere with the impugned order. The petition is liable to be dismissed and is hereby dismissed.

9. The stay granted by this Court earlier is hereby vacated. The parties to now appear before the Appeal Court on 4/6/2019 at 11.00 a.m. Since the original appellant has not appeared in this matter, the Appeal Court to issue notice to the original appellant and thereafter proceed to dispose of the appeal in accordance with law and on its own merits.

10. Ld. Counsel for the petitioner prays for continuation of the interim relief. Now that the date given for appearance is

4/6/2019, there is no case made out for extension of interim relief. In any case, it is not a fit case to continue the interim relief which will only delay the disposal of the appeal on merits.

(M. S. SONAK, J.)