

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6624/2019

(SANTOSH JANARDHAN CHANKHORE & OTHERS **VERSUS** KALNU LAXMAN SAPKAL & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri Bhushan Dafle, counsel for petitioners.
 Shri V.K. Paliwal, counsel for R-1 to 6.

CORAM : A.S. CHANDURKAR, J.

DATE : NOVEMBER 29, 2019.

Challenge raised in the present writ petition is to the order passed below Exhibit 56 dated 11.09.2019 by which the trial Court has allowed the application for amendment that was moved by the respondent nos.1 to 6-plaintiffs.

According to Shri Bhushan Dafle, learned counsel for the petitioners the suit in question was filed on 16.11.2010. In paragraph 6 of the plaint, the plaintiffs had referred to the sale-deed dated 12.10.2009 by which part of the suit property was sold to the defendant no.4. According to him, though the plaintiffs were aware about the existence of that sale-deed they moved an application for amendment only on 26.08.2019 for challenging the same. It is also submitted that the trial Court has observed in paragraph 7 of its order that the provisions of Article 137 of the Limitation Act, 1963 were not attracted while considering the application for amendment. By relying upon the decision in *Harinarayan G. Bajaj & Another Versus Vijay Agarwal & Others* [2012(2) Mh.L.J. 106], it is submitted that the application for amendment having been filed after a period of more than three years was not liable to be entertained. In any event it was submitted that the relief sought with regard to declaration in respect of the sale-deed dated 12.10.2009 was barred by limitation. The trial Court therefore was not justified in allowing the amendment application.

Shri V.K. Paliwal, learned counsel for the respondent nos.1 to 6 supported the impugned order and submitted that the trial Court rightly observed that the question of limitation could be adjudicated after the evidence is recorded. He submitted that as the trial is yet to commence, no prejudice is caused to the petitioners if the amendment application is allowed.

Heard the learned counsel and perused the pleadings of the parties. It is not in dispute that the trial in the suit is yet to commence. The question whether the relief sought by the plaintiffs by amending the plaint is barred by limitation is an aspect to be considered alongwith the issues that would be framed in the suit. At this stage, the amendment is not liable to be disallowed on that count. The trial Court has observed that the question of limitation can be considered alongwith all issues framed in the suit. Though it was not necessary for the trial Court to have observed that the provisions of Article 137 of the Limitation Act, 1963 were not applicable which observation is not in accordance with the ratio of the decision relied upon by the learned counsel for the petitioners, that by itself would not vitiate the impugned order.

Hence, I am not inclined to interfere with the impugned order. It is however clarified that the observations in paragraph 7 of the said order would not come in the way of the petitioners. Similarly, if the petitioners in their consequential pleadings raise the defence of bar of limitation, the trial Court shall frame an issue in that regard and decide the same in accordance with law.

With these observations, the writ petition is disposed of. No costs.

JUDGE