

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2462 OF 2020

Habib Alvi Habib Amar,
Age-65 years, Occu-Agriculture,
R/o Arab Galli, Bidkin, Taluka Bidkin,
District Aurangabad
At present R/o Mujaffar Nagar,
Hudco Corner, Aurangabad,
Tal. and Dist. Aurangabad

-- PETITIONER

VERSUS

Sharifa Salmabi Habib Abdullah,
Age-70 years, Occu-Agriculture,
R/o Bhokardan, Taluka Bhokardan,
District Jalna,
Through her Power of Attorney,
Amar Habir Abdullah Al-haddad
Age-43 years, Occu-Mechanic,
r/o Bhokardan, Taluka Bhokardan,
District Jalna,
Presently residing at
Near Rajdhani Dhaba, Harsul T-Point,
Aurangabad

-- RESPONDENT

Mr.A.P.Bhandari, Advocate for the petitioner.
Mr.Deepak P.Bakshi, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/02/2020

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner/original defendant in RCS No.235/2013, is aggrieved by the order dated 11/06/2019 passed by the Trial Court, by which, his application Exh.67, praying for leave to add one paragraph regarding the ground of limitation, has been rejected.

3. I have considered the strenuous submissions of the learned Advocates. The respondent prays for dismissal of this petition with heavy costs. He submits that the petitioner has made 3 rounds to this Court by filing 3 petitions and each of them has been rejected.

4. I find from the proposed amendment that the petitioner desires to raise a ground based on Law that the succession opens on the death of the propositus and the cause of action therefore accrues and the limitation starts from the date of death. The original ancestors, who owned the property, died more than 60 years ago and the succession opened immediately on such death. Consequentially, the pending suit would be barred by residuary Article 113 of the limitation Act.

5. The learned Advocate for the plaintiff submits that the defendant himself had documented a partition of the property in

2008 and therefore the suit would be perfectly maintainable.

6. I find that WP No.11855/2018 preferred by this petitioner praying for framing of the issue of limitation and maintainability, was dismissed by this Court vide order dated 23/10/2018 as there were no pleadings in so far as framing of the issue of limitation was concerned. It is in this backdrop that the proposed paragraph was sought to be introduced as an amendment.

7. Considering the above and keeping in view the crystallized law that a litigant should be given an opportunity of putting forth his best case, that this petition is allowed, with the following directions :-

(a) The impugned order dated 11/06/2019 is quashed and set aside and Exhibit 67 is allowed so as to permit the petitioners to add the said proposed paragraph in his written statement.

(b) The petitioner shall deposit an amount of Rs.10,000/- in this Court on or before 26/02/2020. By the consent of the learned Advocate for the respondent, the said amount would be donated for the treatment of poor patients with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft

(Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti**”).

(c) The petitioner shall produce the receipt of such deposit before the Trial Court on 27/02/2020, which is the next date in the suit.

(d) The amendment alongwith the amended copy of the written statement, shall be filed before the Trial court on 27/02/2020.

(e) The plaintiff would be at liberty to add paragraphs to the plaint so as to oppose the amendment and such amendment to the plaint shall be carried out and the amended copy of the plaint, shall be filed on or before 30/03/2020.

(f) Thereafter, the Trial Court would frame a specific issue as regards limitation, on or before 30/03/2020 and the parties would be at liberty to lead additional evidence on the issue of limitation.

(g) Considering that the suit was earlier expedited, the Trial Court would endeavour to decide the said suit as expeditiously as possible and in any case on or before 30/09/2020.

(h) The parties shall act on the print out copy of this order obtained from the official website of the Bombay High Court.

(Ravindra V.Ghuge, J.)