

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

WRIT PETITION NO. 7908 OF 2018

Shri. Ravi Chagansingh Vyas Petitioner

Vs.

Shri. Pandurang Baburao Ghag & Ors. Respondents

Mr. Abhijit Desai i/by Desai Legal for Petitioner.

Mr. Avinash B. Avhad for Respondent No. 1A to 1F

Mr. Rohan Hogle for Respondent No. 2

Coram : NITIN W. SAMBRE, J.

Date : 9TH MARCH, 2021

P.C.:

1. This Petition is by the Defendant No. 1 to Regular Civil Suit No. 169 of 2010, which was for injunction.
2. Exhibit 47, an Application under Order 6, Rule 17 of C.P.C. by the Respondent-Plaintiff came to be allowed vide order impugned dated 22nd January, 2018. As such, this petition.
3. The submissions are, the fact of execution of sale-deed dated 16th November, 2010 by Defendant No.1 in favour of Defendant No. 2, was within the knowledge of the Plaintiff. Alongwith suit no.

challenge to the same was initiated, hence bar under the provisions of Order II, Rule 2 of C.P.C. will operate. According to him, the said act of the Respondent-plaintiff amounts to the relinquishment of part of the claim. Further contentions are, sale deed dated 16th November, 2010 is sought to be challenged through amendment and said claim was time barred. The nature of amendment changes the entire claim and that being so, an amendment ought not to have been granted.

4. The Counsel for the Respondents supports the order impugned.

5. With the assistance, I have perused the rival pleadings in the plaint and written statement. As far as the contentions about relinquishment of part of claim based on the provisions of Order 2, Rule 2 of C.P.C. is concerned, the fact which is required to be taken note of, is trial in the suit is yet to commence. The amendment is based on same cause of action, as such bar thereunder will not operate.

6. In the case in hand, since the trial is yet to commence, the Petitioner/Defendant will have every right to counter the same by filing his additional W.S., if so desired.

7. Apart from above, issue of limitation as is sought to be claimed is a mixed question of law and fact. The trial Court will go into the same at an appropriate stage of proceedings.

8. No case for interference in extra ordinary jurisdiction is made out. The Petition fails, dismissed.

(NITIN W. SAMBRE, J.)