

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

27 WRIT PETITION NO.5836 OF 2022

Kaduba S/o. Shamrao Wagh
Age: 60 years, Occu.: Agri.,
R/o. (Adnadi Area) Phulambari,
Tq.Phulambari, Dist.Aurangabad.

..Petitioner
(Original Defendant)

VERSUS

01. Kaduba S/o. Ramrao Gayke
Age: 56 years, Occu.: Agri.,

02. Bhausahab S/o. Ramrao Gayke
Age: 52 years, Occu.: Agri.,
Both R/o. Bilda, Tq.Phulambari,
Dist.Aurangabad.

..Respondents
(Original Plaintiffs)

...
Advocate for Petitioner : Mr.Ujwal Subhash Patil
Advocate for Respondents : Mr. Ravindra V. Gore

...
CORAM : MANGESH S. PATIL, J.

DATE : 27 June 2022

ORAL JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith. Mr.R.V.Gore, learned Advocate waives service of notice for the respondents. At the request of the parties, the matter is taken up for final hearing at the stage of admission.

3. The respondents have filed a suit for removal of the alleged encroachment made by the petitioner to the extent of 22 Gunthas.

4. After the suit reached the stage of recording evidence, the petitioner submitted an application (Exhibit-29) under Order VI Rule 17 of the Code of Civil Procedure and sought to add a contention regarding the suit being barred by limitation which has been rejected by the order under challenge.

5. In view of Section 3 of the Limitation Act 1963, it is imperative for the trial Courts to frame a issue regarding limitation even if it is not set up as a defence.

6. Issue regarding limitation has never been framed.

7. By way of proposed amendment, without adding anything else, only Clause 22-A is sought to be added in the written statement for taking up an objection on the ground of limitation.

8. Mr.Gore, learned Advocate submits that the respondents are apprehensive because the petitioner is indirectly intending to set up a plea of adverse possession belatedly.

9. Learned Advocate for the petitioner submits that no such plea of adverse possession is being taken or intended to be taken.

10. If such is the state of affairs, when apart from Section 3 of the Limitation Act, the proposed amendment seeks to set up

limitation as a defence, the trial Court ought to have been more pragmatic.

11. Pertinently, the trial Court has proceeded to make certain observations as if it was called upon to decide the issue of limitation, which could not have been the proper course to be adopted by it. Since the trial is still to begin, a request for framing an issue by setting up a defence on the ground of limitation could not have been turned down in the manner in which it has been done.

12. Writ petition is allowed. The impugned order is quashed and set aside.

13. Application Exhibit-29 in the suit stands allowed.

14. The trial Court may now permit the petitioner to carry out amendment and thereafter, frame an additional issue regarding limitation.

15. Suit is expedited.

16. Rule is made absolute in the above terms.

(MANGESH S. PATIL)
JUDGE