

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

WRIT PETITION NO.999 OF 2021

**DATTARAO NARAYANRAO MORE AND ANOTHER
VERSUS
SOW. MATHURABAI MADHAVRAO PATIL AND ANOTHER**

...

Advocate for Petitioners : Mr. Sachin G. Joshi
Advocate for Respondent No.2 : Mr. P. P. Mandlik

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 27th JULY, 2022

PER COURT :

1. The petitioners are aggrieved by the order dated 28/11/2019 passed by learned Civil Judge Junior Division, Loha, District Nanded below Exhibit-127 in Regular Civil Suit No.41/2005, thereby rejecting amendment application filed by petitioners.

2. Petitioners/original plaintiffs filed suit for perpetual injunction and declaration of ownership. During pendency of suit, petitioners filed application Exhibit-127 under Order 17 Rule 6 of the Code of Civil Procedure for amendment. Respondents/defendants strongly resisted the said application. Trial Court rejected the application on the ground that relief sought by way of amendment is barred by limitation.

3. In *Appeal (Civil) No.5839/2002 (Sampath Kumar Vs. Ayyakannu and Another)*, the Hon'ble Apex Court held :-

"An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed."

4. So as to avoid multiplicity of the proceedings amendment as sought by the petitioners, can be allowed by keeping the point of limitation open. It is also a settled legal position that merits of the amendment cannot be considered at the stage of deciding amendment application.

5. In that view of the matter, writ petition is allowed. Impugned order dated 28/11/2019 passed by learned Civil Judge Junior Division, Loha, District Nanded below Exhibit-127 in Regular Civil Suit No.41/2005, is hereby quashed and set aside. Application Exhibit-127 is allowed by keeping the point of limitation open.

(NITIN B. SURYAWANSHI, J.)