

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

**WRIT PETITION NO.9915 OF 2022**

**SHRI. RAMESH ALIAS RAMESHCHANDRA RAMRAO BIDKAR AND  
OTHERS  
VERSUS  
SOW. SHOBHA ARVIND ZEND AND OTHERS**

...  
Advocate for Petitioners : Mr. Dattatraya V. Katneshwarkar

...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 27<sup>th</sup> SEPTEMBER, 2022**

**PER COURT :**

1. Petitioners have challenged order dated 04/05/2022, passed by learned Civil Judge Junior Division, Partur, below Exhibit-60 in Regular Civil Suit No.103/2012, thereby allowing application filed by plaintiffs/respondent Nos. 1 and 2 under Order VI Rule 17 of the Code of Civil Procedure.

2. Learned advocate for petitioners contends that by way of amendment, plaintiffs have sought declaration that registered sale deed bearing No.157/1996, dated 24/05/1996, executed by defendant No.3 in favour of defendant No.1, is null and void. According to petitioners, defendant Nos. 2 to 10 in their written statement filed on 12/03/2013 have already averred that sale deed No.157/1996 is executed on 24/05/1996, in favour of defendant No.1 and application seeking amendment is filed in the year 2021.

Therefore, there is lack of due diligence on the part of plaintiffs in filing said application. In terms of Article 137 of the Limitation Act, said relief is beyond limitation and therefore, trial Court has committed error in allowing the amendment application.

3. In the light of the settled legal position that amendments are to be liberally allowed, trial Court has allowed the amendment, holding that amendment is necessary for determination of real controversy in the suit and foundation is already laid by plaintiffs in pleadings in the plaint and therefore, by way of amendment plaintiffs are only strengthening their case.

4. This Court is not inclined to interfere in the discretion exercised by the trial Court in allowing amendment in view of settled legal position.

5. Writ petition is, therefore, dismissed. However, it is made clear that point of limitation to challenge the said sale deed, is kept open for adjudication at the time of final decision of suit.

**(NITIN B. SURYAWANSHI, J.)**