

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4136 OF 2022**

GOVIND RAGHUNATH PATIL & ORS. ..PETITIONERS

VS.

AKKATAI GOVIND BHUINGADE & ORS...RESPONDENTS

Mr. Vikrant A. Desai for petitioners.

CORAM : M. S. KARNIK, J.

DATE : JULY 22, 2022.

P.C. :

1. Heard learned counsel for the petitioners.
2. The challenge in this writ petition is to an order dated December 5, 2019 passed by the trial Court allowing the application (Exhibit 72) filed by the plaintiff for amendment under Order VI Rule 17 of the Code of Civil Procedure. Vide the application (Exhibit 72) the plaintiff had prayed for permission to amend the plaint and for adding two additional defendants, who were party to the sale deeds.
3. This writ petition is by the defendants. Learned counsel for the petitioners submitted that a composite application was not tenable and therefore, on that count itself the trial Court should have rejected the application (Exhibit 72). He further submits that having rejected the request made by the plaintiff for impleading Mr. Subhash Dattatray Bhoi and the Sarpanch of Grampanchayat Devale

as party defendants, the question of then entertaining the amendment application under Order VI Rule 17 of the Code of Civil Procedure did not arise. Learned counsel further submitted that the sale deeds are dated September 14, 2007 and April 17, 2015 in respect of which fraud is alleged. The plea, therefore, is barred by law of limitation. It is further contended that the application for amendment is entertained after the issues are framed, which is not permissible.

4. I have gone through the impugned order. I find no reason to interfere with the impugned order allowing the application made by the plaintiff for amendment of the plaint. It is contention of the plaintiff in the application for amendment, that after the written statement was filed, she came to know of the sale deeds dated September 14, 2007 and April 17, 2015 purportedly executed by her. It is the case of the plaintiff that the sale deeds have been obtained by fraud. In paragraph 4 of the order passed by the trial Court the nature of the fraud pleaded is indicated. Considering the nature of the amendment sought, it does not change the nature of the suit. It is after the written statement is filed that plaintiff realized the fraud played.

5. It is always open for the defendants to file a written statement to the amended plaint. Furthermore, if the amended plea of the plaintiff is barred by law of limitation, such contention can be raised in the written statement as well which shall obviously be dealt with on its own merits by

the trial Court in accordance with law. I do not find any illegality in the order passed by the trial Court so as to warrant any interference.

6. The writ petition is rejected.
7. The issue of limitation is kept open.
8. No order as to costs.

(M.S.KARNIK, J.)