

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

WRIT PETITION 10198 OF 2014

Mahavir Babu Madnaik

...Petitioner

vs.

Mrs.Aavubai Babu Madnaik,
since deceased through her legal heirs
1a. Shantinath babu Madnaik & Ors.

...Respondents

Mr.Surel S. Shah for Petitioner.

Mr.Vijay Killedar for Respondent 1a.

CORAM : ROHIT B. DEO, J.

DATED : 21 JUNE 2022

P.C. :

1. The Petitioner is the original Plaintiff whose application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 is rejected by the learned trial Judge vide order dated 12 August 2014.

2. This Court issued notice vide order dated 16 February 2015, paragraph 3 of which reads thus :

“3. Notice is restricted to the amendment sought so as to incorporate the prayer for possession in respect of which the finding of the Trial Court that the said prayer is also barred by limitation, prima facie appears to be erroneous. In so far as the rejection of the other two prayers i.e. prayers relating to the Will Deed and Sale Deed is concerned, the finding of the Trial Court appears to be correct. Hence the parties are therefore put to notice that in view of the narrow controversy involved, the above Writ Petition may be heard and disposed of finally at the stage of admission. In the meantime there

would be ad-interim relief in terms of prayer clause (d).”

3. In view of the limited notice issued, the only question which survives for consideration is whether the learned trial Judge was justified in rejecting the prayer to incorporate the relief of possession on the premise that the relief is barred by limitation.

4. I have scrutinised the application under Order 6 Rule 17 and the averment is that the Plaintiff is dispossessed during the pendency of the civil suit. In this view of the matter, the rejection of the amendment to the extent the relief of possession is claimed, is clearly erroneous.

5. The order impugned is set aside only to the extent that the Plaintiff is not permitted to incorporate the relevant averments and relief pertaining to dispossession (paragraphs 5b, 3 and 7a). Rest of the order is confirmed.

6. The petition is disposed of.

(ROHIT B. DEO, J.)