

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2490/2019

1. Yamutai @ Pramila Ramrao Karale,
aged about 82 years, Occ. Household,
(Died on 06.10.2013), with only legal
heir.
2. Smt. Manda wd/o. Vilas Thorat,
Aged about 54 yrs., Occ. Household,
R/o. Ayodhya Nagar, Balapur Road,
Akola, Tah. & Dist. Akola.
Mb. 9822901428

... **PETITIONERS**
(Ori. Pltff.)

VERSUS

1. Ashok Gajanan Karale, Aged
about 52 yrs, Occ. Agriculturist,
R/o. Deshmukhpura Shegaon,
Tal. Shegaon, Dist. Buldhana.
2. Sau. Tilottama Vikas Patil, aged
about 52 yrs., Occ. Tax Advisor,
R/o. 33/59, Savitri Sadan,
behind S.B.I. Jalgaon, Tq. & Dist.
Jalgaon.
3. Vijay Bhaurao Deshmukh, aged
about 53 yrs., Occ. Agri. &
Business, R/o. Fule Nagar,
Shegaon, Tq. Shegaon, Dist.
Buldhana.

4. Smt. Shakuntala Gajanan Karle,
aged about 85 yrs. Occ.
Household, R/o. Deshmukhpura
Shegaon, Tq. Shegaon. Dist.
Buldhana.
5. Smt. Rekha Vijay Deshmukh,
aged about 60 yrs., Occ.
Household, R/o. Deshmukhpura,
Shegaon, Tq. Shegaon, Dist.
Buldhana.
6. Sau. Chhaya Dinkar Kastode,
aged about 53 yrs., Occ.
Household Work, R/o. Nila Park,
Jalgaon, Tq. & Dist. Jalgaon,
Khandesh.
7. Sheela Krushnarao Deshmukh,
aged about 50 years, Occ.
Household Work, R/o. At Post
Umara, Tq. Sangrampur, Dist.
Buldhana.

... **RESPONDENTS**
(Ori. Deftts.)

Mr. S.W. Deshpande, Advocate for petitioners.

Mr. N. Dhoot, Advocate h/f Mr. N. R. Saboo, Advocate for
respondent Nos. 1, 4 to 7.

Mr. P. Deshpande, Advocate h/f Mr. D.L. Khapre, Advocate for
respondent No.3.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **12.12.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. This petition is of original plaintiff challenging the order of rejection of amendment by the Trial Court vide order dated 28.02.2019. The plaintiff sought amendment in the plaint seeking additional relief on the basis of sale transaction took place during the pendency of suit. By way of proposed amendment, the plaintiff sought to seek additional relief that a sale-deed dated 04.06.2012 executed by defendant No. 1 along with defendant Nos. 4 to 7 in favour of the defendant No. 3 be declared as null and void. The Trial Court has rejected the application on the ground that the additional prayer is barred by law of limitation. It is held that the plaintiff is seeking relief of declaration that the sale-deed is null and void. The Trial Court observed that the plaintiff has knowledge of sale-deed in the year 2014 and thus, the amendment which is sought after three years is barred by limitation.

4. Initially, the plaintiff has filed suit for partition, separate possession and injunction. The suit was filed against only two

defendants. During the pendency of suit (RCS No. 54/2012) original defendant No. 1 along with subsequently added defendant Nos. 4 to 7 have sold the suit property in favour of defendant No. 3 vide sale-deed dated 04.06.2012. After getting knowledge of pendant light transaction, the plaintiff has initially applied in the year 2014 for addition of purchaser – defendant No. 3 as a party to the suit in terms of Order I Rule 10 of the Code of Civil Procedure ('CPC'). The said application was allowed by the Trial Court vide order dated 04.09.2014 at Exhibit 42. It reveals that thereafter once again plaintiff has filed another application for addition of defendant Nos. 4 to 7 which appears to have been allowed by the Trial Court.

5. Being aggrieved by order dated 04.09.2014 (Exhibit 42) passed by the Trial Court for addition of purchaser, original defendant Nos. 1 and 2 have filed writ petition No. 7177/2014 which was withdrawn on 04.10.2016. In the wake of such position, the plaintiff filed existing amendment application (Exhibit 86) on 19.07.2018 seeking amendment about additional relief pertaining to sale-deed dated 04.06.2012. The amendment is based on the subsequent sale-deed dated 04.06.2012 and the relief of declaration to that effect. The Trial Court rejected amended additional relief only on the count that the amendment is time barred. It is not in dispute that the plaintiff was

aware about sale-deed dated 04.06.2012 in the year 2014 itself, since plaintiff has applied for addition of purchasers in the suit which was also allowed by this Court vide order dated 04.09.2014. Even if it is assumed that the plaintiff was unaware of the transaction on the date of sale-deed, however the plaintiff's own application for addition of party is sufficient to demonstrate that at the time of filing application (Exhibit 42) for addition of parties (filed on 26.06.2014), plaintiff was aware about the sale transaction. Further, it is not in dispute that the present amendment application is filed on 19.07.2018 that is after three years from acquiring the knowledge as per plaintiff's own case.

6. The only limited issue involves is whether the plaintiffs can be permitted to carry the amendment which is barred by limitation. On this point, the learned counsel appearing for the plaintiff would submit that the order of addition of party dated 04.09.2014 was challenged by the defendants in writ petition No. 7177/2014 and it was withdrawn on 04.10.2016. According to the plaintiff, due to pendency of said writ petition, the plaintiff was precluded from seeking amendment. As a matter of fact, this Court has not stayed proceeding of the Trial Court in writ petition No. 7177/2014. Even if, there is stay, still the plaintiff can file amendment application to the Trial court, if it would become time barred. The period of limitation once commenced in the year 2014,

cannot be stopped by any eventuality. Pendency of writ petition is no ground to exclude the time.

7. It is argued that the plaintiff was not allowed to file amendment application. It is also argued that the plaintiff was widow. She was unaware about the proceeding.

8. There is no question of judicial discretion, if original suit or claim is time barred. Section 5 of the Indian Limitation Act would not apply to the original suit. Needless to say that all amendments, if allowed, would relate back to the date of suit and thus, the Trial Court has rightly rejected amendment.

9. In view of above, writ petition carries no merits, hence stands dismissed.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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