

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 176 OF 2019

TULSHIDAS DATTARAM SHIRODKAR

AND ANR.,

.... Petitioners.

Versus

PANDURANG RAMA KATE (DEC)

THR. LRS.,

.... Respondents.

Mr Jagannath J. Mulgaonkar, Advocate for the Petitioners.

Mr Paresh Sawant, Advocate for Respondent No.1(a), 1(b) and 1(c).

CORAM : M. S. SONAK, J.

DATE : 17th February 2023

P.C. :-

1. Heard Mr J.J. Mulgaonkar for the Petitioners and Mr Paresh Sawant for Respondents No. 1(a), 1(b) and 1(c).
2. The challenge in this Petition is to the order dated 19/11/2018, by which the Executing Court has allowed the Decree-holders to amend the execution application.
3. Mr Mulgaonkar submits that the relief claimed for by proposing to amend the execution application, is barred by limitation and, further, the same travels beyond the decree, which is put in execution.

4. Mr Sawant disputes the above position and submits that the amendment is clarificatory as held by the learned Executing Court. Besides, he relies on *Mahavirprasad s/o. Hanumandas Sharma vs. Surendra Ambalal Khatri and anr.* 1995 1 BCR 13, in which it is held that the issue of limitation can always be left open while allowing the application seeking leave to amend.

5. On perusing the impugned order, there is no ground to infer with the same. However, it is clarified that the issue of limitation and also the issue as to whether after the amendment, the relief applied for travels beyond the decree which is put in execution, are kept open. These issues will have to be considered and decided by the Executing Court on their own merits and in accord with law.

6. All contentions of all parties, on merits of the execution are, therefore, left open.

7. With the above observations, this Petition is disposed of.

8. There shall be no order for costs.

M. S. SONAK, J.