

SA Pathan

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

WRIT PETITION NO.13211 OF 2023

Deepak Shripal Kerumane

... Petitioner

V/s.

Aakkatai Babu Kerumani (Deceased)

Through Legal Heirs & Ors.

... Respondents

Mr. Dhairyasheel Sutar, for petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 23, 2023

P.C.:

1. Petitioner defendant No.4 is challenging order passed by the Trial Court allowing application for amendment of plaint in a suit for specific performance. By way of proposed amendment, the plaintiff sought to challenge validity of WILL executed in the year 2012. The plaint for amendment was filed on 2 May 2023.
2. The Trial Court has allowed the application for amendment by the impugned order.
3. Learned Advocate for the petitioner submits that the relief sought to be add proposed amendment is barred by limitation.
4. Considering the nature of the suit and the proposed amendment, in my opinion, the Courts permitted by the Apex Court in the case of **L. J. Leach and Company Ltd. Versus Jardine Skinner and Company**, reported in (2004) 3 SCC 392 needs to be

adopted.

5. It is made clear that the proposed amendment incorporating relief of challenge to the WILL. The issue of limitation in relation to the proposed amendment shall be decided by the Trial Court at the time of final disposal of the suit. The Trial Court shall frame an issue as regards limitation of the relief prayed by the plaintiff as regards WILL and decide such issue on its own merits.

6. With this clarification, no interference in the impugned order is called for.

7. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)