



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 864 OF 2023

Shalan Balu Shinde.

...Petitioner.

Versus

Satgonda S. Patil and Another.

..Respondents.

Mr. P. M. Arjunwadkar for the petitioner.

Mr. Chetan G. Patil for respondent no1.

Coram : Sharmila U. Deshmukh, J.

Date : August 17, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 2nd November 2022 permitting the respondent-plaintiff's application seeking amendment of plaint.

3. Learned counsel appearing for the petitioner has taken this Court through the averments in the plaint and would submit that it is the specific contention of plaintiff that the plaintiff had acquired knowledge on 6th May 2017 as regards the sale deed executed on 27th May 2014. He would contend that in spite of acquiring knowledge at the time of institution of suit itself, the plaintiff only sought the relief

that the sale deed of the year 2014 is illegal and incapable of execution and as such is not binding on the share of plaintiff which may accrue to the plaintiff after partition. He would further submit that on 9th February 2022, an application for amendment has been filed, which has been allowed by the trial Court. His grievance is that as regards the proposed amendment for correcting the description of the properties there is no objection, however, by the proposed amendment a relief is sought as regards the cancellation of sale deed of the year 2014 which according to learned counsel for the petitioner is barred by limitation inasmuch as the knowledge is said to have been acquired in the year 2017. He draws support from the provisions of Article 59 of the Limitation Act, 1963 which provides for a period of three years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. He would urge that considering the said provision, the order of trial Court allowing the amendment to relate back to the date of suit cannot be permitted.

4. *Per contra* learned counsel for the respondent submits that the foundation to the challenge has already been laid in the pleadings and by the reliefs in plaint, the plaintiff had sought a declaration that the sale deed of the year 2014 is illegal and incapable of execution

and that the same is not binding on the share of plaintiff. He would submit that the declaration as regards the illegality of sale deed was already sought. Without prejudice to his contention, learned counsel for the respondent would submit that as far as the issue of limitation is concerned, the date of knowledge is 6th May 2017 and the application for amendment has been filed on 9th February 2022. He would submit that the Apex Court in *suo moto* petition No.3 of 2020 had extended the period of limitation from 16th March 2020 to 20th February 2022. He would contend that the application for amendment being filed on 9th February 2022 is, thus, within limitation.

5. Considered the submissions.

6. It is not disputed that the amendment was a pre-trial amendment and during the pendency of this proceeding, the plaint has been amended and the written statement has already been filed. The only grievance raised against the order allowing the amendment, which according to the petitioner is time barred, is that the amendment is permitted to relate back to the date of suit and the same contravenes the provisions of Article 59 of the Limitation Act, 1963. Considering that the only grievance is as regards limitation, the same stood extended by the direction of the Apex Court during the Covid-19 pandemic and, as such, the application for amendment filed

on 9th February 2022 was within limitation.

7. In that view of the matter, there is no warrant for interference with the order of trial Court allowing the amendment application. Writ petition fails and stands dismissed.

[Sharmila U. Deshmukh, J.]