

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3769 OF 2022

Mokam Singh Kinot
Thr. his POA
Lachmeet Kaur KInot

...Petitioner

Versus

Babita Kaur Kinot & Ors.

...Respondents

Mr. Shivaji Masal for the Petitioner.

*Mr. Rishi M. Deshpande , Mr. Abhijeet A. Sawant & Ms. Ketki D. Karade
for Respondent Nos. 1 & 2.*

Coram : Sharmila U. Deshmukh, J.

Date : July 31, 2023.

P. C. :

1. Herad.
2. The challenge in the Petition is to the order dated 3rd January, 2022 permitting the Plaintiff's Application for amendment of the plaint seeking to challenge the Gift Deed dated 12th May, 2015.
3. Learned counsel appearing for the Petitioner submits that the suit was instituted for partition in the year 2015. He would further submit that

the Petitioner had filed his written statement on 5th March, 2016 in which a specific contention has been raised that there has been a Gift Deed executed on 12th May, 2015. He would further submit that as such the Respondent-Plaintiff acquired the knowledge on 5th March, 2016 and the Application for amendment has been filed on 9th January, 2020 and as such there is delay. He would further submit that the Gift Deed which has been executed in the year 2015 is now sought to be challenged by the proposed amendment in the year 2020.

4. Per contra, learned counsel appearing for the Respondent-Plaintiff submits that the Plaintiff was not aware of the execution of the Gift Deed at the time of institution of the proceeding and that the same came to his knowledge during the proceeding. He would further submit that delay cannot be a ground for rejecting the proposed amendment.

5. Considered the submissions.

6. The law as regards the amendment of the pleadings has been crystallized by the Apex Court in the case of ***Life Insurance Corporation Of India v. Sanjeev Builders Private Limited & Anr., [(2022) SCC OnLine SC 1128]***. The Apex Court in the said decision has held that it is not an absolute rule that if a time barred claim is raised, the amendment is required to be rejected. In the present case, it is contended that the same

was not within the knowledge of the Plaintiff at the time of institution of the suit and it is only upon filing of the written statement on 5th March, 2016, the Plaintiff became aware of the execution of the Gift Deed and now by the proposed amendment seeks to challenge the same. In that view of the position put forward by the Respondent-Plaintiff, the question of limitation become a mixed question of fact and law which is required to be decided at the time of adjudication of the trial. It is settled that the merits of the proposed amendment are not required to be gone at the stage of considering the Application for amendment and the question of limitation is kept open to be decided at the time of the trial.

7. As regards the issue of delay, as the Application for amendment has been filed in the year 2020 after the delay of almost 4 years, the Apex Court in the decision of *Life Insurance Corporation Of India* cited (supra) has held that delay per se cannot be a ground for rejection of the Application for amendment. In the present case, the Trial Court has not yet commenced and in my view the proposed amendment being pre trial amendment are required to be liberally allowed.

8. Needless to clarify that the issue of limitation which is raised by the Petitioner will be decided as an issue at the time of the adjudication of the controversy on merits.

9. In light of the above there is no warrant for interference in exercise of the power under Article 227 of the Constitution of India. Writ Petition stands dismissed.

[Sharmila U. Deshmukh, J.]