

Nikita

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

WRIT PETITION NO.8324 OF 2023

Madhav Sukdev Devare

... Petitioner

V/s.

Dagadu Dada Kale and Ors.

... Respondents

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Mr. Girish R. Agrawal a/w Ms. Naina Boraste for the
Petitioner.

Mr. Anilkumar K. Patil, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 13, 2023

P.C.:

1. Challenge in this petition is to the rejection of application of amendment of the plaint. Petitioner is original plaintiff who filed suit for declaration of his ownership and for injunction restraining defendants from encroaching over plaintiff's property. Suit is filed on 16th March 2017.

2. On 9th December 2019, plaintiff filed an application for amendment of plaint to incorporate challenge to the measurement order passed on 27th June 2005. According to petitioner, challenge to the measurement order was made which was confirmed on 10th July 2018 and, therefore, application is within limitation.

3. The Trial Court rejected the application but the ground that the relief prayed is barred by limitation. On perusal of the application for amendment, it appears that the petitioner seeks to

challenge measurement order dated 27th June 2005 by seeking declaration that such order is illegal and not binding on the plaintiff. The cause of action for seeking such relief accrued on 27th June 2005. Confirmation of such order would not give fresh cause of action to the petitioner as limitation to challenge such order began on 27th June 2005. Such relief would be governed by Article 55 of the Limitation Act, 1908. Such declaration needs to be sought within three years from the date of execution. The application on 9th December 2019 is ex-facie barred by limitation.

4. Hence no fault can be found with the Trial Court's order. The learned advocate for the petitioner relied on the judgment in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr.** reported in 2023 (2) ALL MR 333 (S.C), where the Apex Court delineating parameters governing Order 6 Rule 17, parameter (c) of (iii) reads as under :

“70 (iii).....

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).”

5. Relying on the such parameters, also the order of Trial Court cannot be faulted as the said parameters supports the impugned order. There is no merit in the petition.

6. The writ petition stands dismissed.

(AMIT BORKAR, J.)