

AGK

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

WRIT PETITION NO.3609 OF 2016

Sulochana Somnath Latnekar ... Petitioner

V/s.

Pratidnya Sanjay Nashte & Ors. ... Respondent

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.09.27
17:35:02
+0530

**WITH
INTERIM APPLICATION NO.12970 OF 2023
IN
WRIT PETITION NO.3609 OF 2016**

Santosh Somnath Latnekar ... Applicant

V/s.

Pratidnya Sanjay Nashte & Ors. ... Respondent

**WITH
WRIT PETITION NO.3575 OF 2016**

Santosh Somnath Latnekar & Anr. ... Petitioners

V/s.

Pratidnya Sanjay Nashte & Ors. ... Respondent

Mr. Vivek V. Salunke with Ms. Sayali Patil for the petitioner in both the WPs & applicant in IA.

Mr. Prasad P. Kulkarni for respondent No.3 in WP/3575/2016 & for respondent No.4 in WP/3609/2016.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 27, 2023

PC.:

1. The defendants in a suit for partition are challenging order of the Trial Court rejecting application for amendment filed prior

to the commencement of trial. The Trial Court rejected the application on the ground that the proposed amendment is not necessary to decide real question in controversy between the parties and the facts entitling defendants to seek amendment were within knowledge of the petitioners.

2. Considering the nature of suit and defense raised, though the reasons of the Trial Court are not satisfactory; however, on consideration of the proposed amendment, and in particular sought to be added by way of counter-claim, it appears that the prayer seeks declaration in relation to registered document executed on 3 October 2001 to be declared as illegal. The petitioners being party to the said document were aware of the said document. The amendment application was filed on 20 February 2015. As per Article 59 of the Limitation Act, 1963, period of three years will start from the date when facts entitling cancellation of instrument first became known to the person. Since petitioners were party to the document, the fact of execution of document was within their knowledge on 3 October 2001. Hence, the relief sought by the petitioners is *ex facie* barred by limitation.

3. The Apex Court in **L.C. Hanumanthappa v. H.B. Shivkumar** reported in (2016) 1 SCC 332 has held that if the amendment is *ex facie* barred by limitation, the Court shall not allow such amendment. It is only in cases where arguable question of limitation arose for consideration, the Court would allow amendment, subject to limitation. Therefore, in my opinion, no error of jurisdiction can be attributed to the Trial Court's order.

4. However, in paragraph 31 of the proposed amendment, the petitioners sought to raise objection of not joining property which was subject matter of relinquishment as the suit property. According to the petitioners, such objection is in substance objection of non-joining of joint family property.

5. Without expressing any opinion on its merit, in my opinion, marked portion of paragraph 31 of the proposed amendment is allowed to be incorporated in the written statement. Hence, following order:

a) Impugned order to the extent of marked portion of paragraph 31 of the proposed amendment is permitted to be incorporated in the written statement. However, rest of the order rejecting application for amendment is confirmed.

6. Both the writ petitions stand disposed of in above terms. No costs.

7. In view of disposal of the writ petitions, all pending interlocutory applications stand disposed of as infructuous.

(AMIT BORKAR, J.)