

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

INTERIM APPLICATION NO.30172 OF 2022

IN

FIRST APPEAL NO.641 OF 2020

Dr. Chittusinh Mohansinh ChauhanApplicant/Appellant

Vs.

Manilal Babubhai Dhodi and Anr.Respondents

WITH

INTERIM APPLICATION NO.30173 OF 2022

IN

FIRST APPEAL NO.641 OF 2020

Mr. Ranjit Thorat, Senior Advocate a/w. Ms. Varsha Palav, Ms. Pratibha Shelke, Mr. Ajinkya Palav and Mr. Anuj Tiwari i/b. The Laureate for applicant/appellant.

Mr. Anoshak DavEr a/w. Mr. Abhishek Matkar and Mr. Malhar Bageshwar i/b. Mr. Abhishek P. Deshmukh for respondent no.1.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.**

DATED : 23rd MARCH 2023

PC. :

INTERIM APPLICATION NO.30172 OF 2022

1 This interim application is to allow applicant, who is appellant, to amend the written statement that was filed before the Trial Court.

2 The appeal is impugning a judgment and decree dated 28th January 2020. The counsel for applicant states that since there was no specific averment in the plaint that the suit was within limitation, the written statement did not have a specific denial that the suit was within limitation and hence, an issue on limitation did not come to be framed. The counsel for applicant states that it is applicant's case that the suit would be

barred by limitation and that being a question in law, applicant is entitled to bring it to the notice of the Court by carrying out necessary amendment to that effect to the written statement.

3 In the plaint, there is an averment in paragraph 10 that “*the cause of action for filing the present suit against defendants arisen on May 2010 since the discovery and knowledge of fraud by making entry of defendant no.1 in Revenue record. Cause of action is being continued since ever from May 2010 till this day as detailed in above paras*”. In paragraph 4 of the plaint also there is an averment that “*plaintiff states that plaintiff got knowledge in May 2010 that defendant no.1 have mutated his name in 7/12 extract of suit land without any notice*”. In the written statement, there is no specific denial for paragraph 10 of the plaint. But in paragraph 5 of the written statement, with reference to what is stated in paragraph 4 of the plaint, defendant has denied that plaintiff got knowledge in May 2010 that defendant had mutated his name in 7/12 extract of the suit land without any notice.

4 The counsel for applicant states that even assuming for the sake of argument that there is no specific denial on the date of cause of action, still the Trial Court in the impugned judgment in paragraph 19 has noted “Learned counsel for the defendant also raised the issue of limitation” and the Trial Court should also ensure that the suit filed is within limitation. The counsel for applicant states, and rightly so, that after

recording that the counsel for defendant raised the issue of limitation, the Trial Court has not given a finding as to when the cause of action arose or whether the suit was within limitation.

5 In our view, therefore, there is no need to amend the written statement in the Trial Court and this Court can go into the evidence since this being a First Appeal and consider whether plaintiff has made out a case that the suit filed was within limitation. This Court can answer the issue in the First Appeal “Whether the suit filed was within limitation?”. This issue can be considered and decided at the hearing of the First Appeal because the Trial Court’s judgment and decree has been impugned on various other grounds as well.

6 Interim application accordingly disposed.

7 Appeal be listed for final hearing on 20th April 2023 alongwith Interim Application No.30173 of 2022 at 2.30 p.m.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)