

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2984 OF 2024

Bharati Sambhaji Patil and Anr.

.. Petitioners

Versus

Ananda Hambirrao Shinde and Ors.

.. Respondents

.....

- Mr. Pradeep D. Dalvi a/w. Ms. Priya Dalvi, Advocate for Petitioners.

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 04, 2024

P.C.:

- 1.** Heard Mr. Dalvi, learned Advocate for Petitioners.
- 2.** The impugned order dated 30.09.2023 is passed in Application filed below Exhibit-51 in Regular Civil Suit No.52 of 2017. The Plaintiffs filed the original suit for partition in the year 2017. Plaintiffs sought to amend the suit plaint by introducing the declaratory relief seeking a direction that the Will of the predecessor-in-title of one of the Defendant would not be binding on them.
- 3.** It is seen that admittedly the dispute was in respect of the Will which is the subject matter of the parallel suit instituted five years before the filing of the suit for partition in the year 2012. The impugned order dismisses the Application seeking declaration of the Plaintiffs on the ground that the fact about the existence of the Will was in fact to the knowledge of the Plaintiffs at the time of institution of the present suit and in any event in the year 2018 itself and

therefore to introduce prayer after the lapse of the period of limitation it would be time barred.

4. Mr. Dalvi would submit that allowing such an amendment would not change the nature of the suit proceedings and further that it would always be open to the Plaintiffs to seek a declaratory relief with respect to devolution of the property.

5. If Mr. Dalvi's submission is countenanced, the provisions of Article 59 of the Limitation Act, 1963 would be rendered otiose.

6. Mr. Dalvi seeks time to place on record certain decisions and citations which would enure to the benefit of the Plaintiffs' case.

7. At his request, stand over to **11th March, 2024**.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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