

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7969 OF 2024

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Vilas Narayan Dhawade & Anr.

... Petitioners

V/s.

Murlidhar Nivrutti More & Ors.

... Respondents

Mr. Himanshu J. Patil with Mr. Avesh Ghadge for the
petitioners.

CORAM : AMIT BORKAR, J.

DATED : JULY 1, 2024

PC.:

1. The petitioners take exception to an order passed by the Trial Court rejecting application for amendment of written statement to incorporate challenge to the registered Will executed on 24 February 1983. The Trial Court rejected the application recording a finding that the amendment is ex facie barred by the law of limitation. The law in this regard has been settled wayback in 1957 in view of judgment in the case of **Pirgonda Hongonda Patil vs. Kalgonda Shidgonda patil and Others** reported in AIR 1957 SCC 363, which is thereafter followed in the case of **L. J. Leach and Co. Ltd. vs. Jardine Skinner and Co.** reported in 1957 SCR 438. The last authoritative judgment is in the case of **L.C. Hanumanthappa (Since Dead) By His Lrs. vs. H. B. Shivakumar** reported in 2016 (1) SCC 332, wherein the Apex Court has held

that ordinarily the amendment of pleadings to incorporate challenge to either the registered instrument or to Will can be allowed. However, if the amendment is ex facie barred by limitation, the Court can reject such application.

2. In the facts of the case, the fact of execution of registered Will deed dated 2 March 1983 was within the knowledge of the plaintiff on the date of filing of the suit as the notice issued prior to institution of the suit and written statement filed by the defendant makes reference to Will dated 2 March 1983. The Trial Court, therefore, recorded a finding that the petitioner was having knowledge of the Will in the year 2015. Hence, the filing of the application to incorporate challenge to Will deed of 2 March 1983 is ex facie barred by limitation. There is no perversity in the impugned order.

3. The writ petition is, therefore, dismissed.

(AMIT BORKAR, J.)