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

WRIT PETITION NO. 5962 OF 2024

Bhimashankar Mahadeo Jamadar

.....Petitioner

Vs.

Chaitali Sagar Survase and ors

.....Respondents

Mr. Vaibhav Kulkarni a/w Mr. Yash Agarwal for the petitioner
Mr. Anvil S. Kalekar for respondents.

CORAM : GAURI GODSE, J.

DATE : 26th JUNE 2025

ORDER:

1. Not on board. Taken on the production board.
2. This petition is filed by the plaintiff to challenge the order rejecting the application for amending the plaint. Learned counsel for the petitioner submits that the issues were framed in the suit on 3rd August 2022. He submits that in the reply to the application for temporary injunction, certain contentions were raised by the defendants and in view of the contentions raised in the reply filed by the defendants, it was necessary for the plaintiff to seek amendment in the plaint with regard to mortgage deed executed by

defendant no. 4. He, therefore, submits that with reference to the contentions raised in the reply filed by defendant no. 4, the plaintiff filed an application to carry out amendment in the plaint seeking further relief of declaration and supporting pleadings. He submits that when the application for amendment was filed on 17th January 2023, the trial had not commenced. However, during the pendency of this petition, the trial has commenced, and the petitioner's evidence is recorded. He submits that since the application was already filed before the trial commenced, the petitioner should be permitted to carry out an amendment to the plaint.

3. Learned counsel for the defendants opposes the prayer for amendment on the ground that the proposed amendment would change the cause of action and the reliefs claimed in the suit. He submits that the proposed amendment is an attempt to bring the suit within the limitation. He, therefore, submits that the proposed amendment that would be barred by limitation need not be allowed.

4. I have perused the papers of the petition. The prayers in the suit are for seeking declaration and challenge to the sale deed executed by plaintiff's father in favour of defendant no. 1 and

subsequent sale deed executed by defendant no. 1 in favour of defendant no. 4. The application seeking leave to amend the plaint refers to the contentions raised in the reply filed by defendant no. 4 to the application for injunction referring to the mortgage deed executed by defendant no. 4 in favour of the State Government. The proposed amendments pertain to the reliefs and supporting pleadings with regard to the mortgage deed.

5. The learned Trial Judge has refused amendment on the ground that the proposed amendment would not only change the reliefs in the suit for injunction, but it would also change the cause of action pleaded in the proposed amendment. The defendants' contentions raised on the cause of action and the point of limitation can always be dealt with by the defendants by filing an additional written statement. A change in the relief or the cause of action can also be raised by filing an additional written statement. Allowing amendment would not automatically bring the suit within the limitation. The issues regarding limitation, cause of action, and whether the proposed amendment would relate back to the date of filing the suit or the date of the amendment application can also be

decided at the time of trial. The learned Judge has rejected the application, observing that the only relief claimed by the plaintiff is an injunction. However, perusal of the plaint shows that the plaintiff has filed a substantive suit for declaration, and the prayers are not only for seeking an injunction.

6. Considering the aforesaid, I do not see any reason to disallow the amendment. The evidence led by the plaintiff is during the pendency of this petition and after the amendment application was rejected. Hence, the amendment cannot be refused on the ground that the trial has commenced during the pendency of this petition. The respondent can deal with the proposed amendment by filing an additional written statement.

7. For the reasons recorded above, this is a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India. However, the issues regarding limitation, cause of action, and whether the proposed amendment would relate back to the filing of the suit or the date of the amendment application can be kept open to be decided in the trial. Hence, the writ petition is allowed by passing the following order:

ORDER

- I. Impugned order dated 15th July 2023 passed by Civil Judge Senior Division, Solapur, below Exhibit 29 in Special Civil Suit No. 591 of 2021 is quashed and set aside.
- II. Application Exhibit 29 is allowed, and the plaintiff is permitted to carry out the amendment as per the proposed amendment in the application at Exhibit 29.
- III. The plaintiff shall be permitted to carry out the amendment within four weeks from the date of producing an authenticated copy of this order before the Trial Court.
- IV. The defendants would be at liberty to file their additional written statement within four weeks thereafter.
- V. It is clarified that the issue regarding limitation, cause of action, and whether the amendment would relate back to the date of filing the suit or the date of amendment is left open to be decided in the trial.
- VI. All rival contentions of parties on merits in the suit are kept open.

8. Writ Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]

**IRESH
MASHAL**

Digitally signed by
IRESH MASHAL
Date: 2025.07.02
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