

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3515 OF 2025

Vitthal Ananta Londhe & Ors

..Petitioners

Versus

The State of Maharashtra Through Secretary &
Ors

...Respondents

Ms. Manisha Devkar, with Siddhi Patil, i/b Shankar Katkar, for the
Petitioner.

Ms. Kavita Solunke, AGP, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 20th MARCH 2025

P.C.:

- 1.** Heard the learned Counsel for the parties.
- 2.** The challenge in this Petition is to an Order dated 22nd June 2022 passed by the learned Civil Judge, whereby the respondent nos. 4 and 5 came to be impleaded as plaintiff nos. 3 and 4 in the Suit and a further Order dated 24th June 2024, whereby respondent nos. 3 and 4 were permitted to amend the Complaint so as to incorporate the averments regarding acquisition of interest in the suit property during the pendency of the Suit and relief of declaration that respondent nos. 3 and 4 have acquired ownership over the suit property pursuant to the Sale Deed executed by plaintiff nos. 1 and 2 in their favour.

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3. A perusal of the Order passed by the Trial Court on 22nd June 2022 indicates that during the pendency of the Appeal, respondent nos. 4 and 5 acquired interest in the suit property under the registered Sale Deed.

4. Thereupon, the petitioners-defendant nos. 3 to 5, who were the Appellants in RCA No. 138 of 2012, sought the impleadment of the respondent nos. 4 and 5 herein as respondents to the said Appeal. By an Order dated 8th August 2012, the said Appeal was allowed and the SCS No. 232 of 2012 was remanded back to the Trial Court for afresh decision. Since respondent nos. 4 and 5 were impleaded as party-respondents in the Appeal and claimed interest in the Suit property on the basis of the Sale Deed executed in their favour, the Trail Court was persuaded to allow the impleadment of respondent nos. 4 and 5 as the plaintiff nos. 3 and 4 in the said Suit.

5. Thus, no fault can be found with the Order of the Trial Court. Respondent nos. 4 and 5 have a direct interest in the subject matter of the Suit. No effective decree can be passed in the Suit in the absence of respondent nos. 4 and 5. Therefore, the said Order does not warrant any interference.

6. After impleadment of the respondent nos. 4 and 5 as the Plaintiff in SCS No. 232 of 2012, the respondent nos. 4 and 5 have filed an application for amendment in the Plaint so as to incorporate averments

regarding the acquisition of interest in the suit property and also seek relief of declaration of title. The said application was resisted by the defendants.

7. By an Order dated 24th June 2024, the learned Civil Judge was persuaded to allow the said application as the amendment was considered to be necessary for the determination of the real question in controversy between the parties. Since respondent nos. 4 and 5 were impleaded as plaintiffs in Suit, the Court was of the view that the amendment was necessary.

8. Ms Devkar, the learned Counsel for the petitioners, submitted that respondent nos. 4 and 5 have purportedly purchased the property in the year 2015. However, the application for impleadment and amendment came to be filed in the year 2024. The relief of declaration was clearly barred by law of limitation. Therefore, the Trial Court could not have allowed the application.

9. I am unable to persuade myself to accede to aforesaid submission. The proposed amendment is essentially consequential to the impleadment of respondent nos. 4 and 5 as plaintiffs. On the count of transfer *pendent lite* they have acquired interest in the suit property, under a registered instrument. It is case of devolution of interest in the suit property during the pendency of Suit.

10. It is trite that the Court is required to take cautious cognizance of the events which transpire during the pendency of the Suit. The proposed amendment is essential for the determination of real question in controversy between the parties. So far as the bar of limitation to the prayer of declaration, in view of the decision of the Supreme Court in the case of **Raghu Thilak D. John V/s. S. Rayappan and Ors.**¹ the amendment can be allowed keeping open the question of limitation. In the facts of the case at hand, the said course appears to be justifiable.

11. Thus it is clarified that the said issue of bar to the relief of declaration is kept open for consideration and the same is to be decided by the Trial Court at the time of final adjudication of the Suit.

12. Subject to abovesaid clarification, Petition stands dismissed.

[N. J. JAMADAR, J.]

1 (2001) 2 SCC 472.