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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6811 OF 2014

Ganpatrao s/o Sambhaji Patange & ors. ..PETITIONERS

VERSUS

Baburao s/o Ganpatrao Patange & ors. ..RESPONDENTS

Mr M.V. Ghatge, Advocate for petitioners;
Mr D.M. Shinde, Advocate holding for Mr R.M. Giri, Advocate for
respondent no.1

CORAM : N.W. SAMBRE, J.
DATE : 7th December, 2015

ORAL ORDER :

In a suit for partition and separate possession, bearing R.C.S.. No.35 of 2010, pending on the file Civil Judge Junior Division, Kallamnuri, the defendants, after tendering their written statement, have moved an application for amendment thereof, which came to be rejected by the impugned order dated 20th January, 2014, passed below Exh.127.

2. Mr Ghatge, learned Counsel appearing on behalf of the petitioners, relying upon the judgment dated 18th September, 2015, rendered in Civil Appeal arising from S.L.P. (C) Nos.31423-31424/2010, in the matter of Ram Niranjana Kajaria vs. Sheo Prakash Kajaria & ors., would urge that the admissions, if any, given by the defendants in the written statement can be explained by taking inconsistent stand. He would then urge that the order impugned suffers from non-consideration of the relevant provisions, as the

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suit has reached at the stage of recording of cross-examination of plaintiffs and it cannot be inferred that the amendment in a written statement cannot be granted at such stage. According to him, the Apex Court, time and again has taken a view that the amendment to the written statement should be granted liberally. According to him, since the parties to a partition suit are having common interest and if the amendment will not be granted, they will be entitled for possession of the property disproportionate size, which is formed to be the property for partition in common hotch-potch.

3. Learned Counsel appearing on behalf of respondent no.1, while opposing the petition, has taken me through the written statement and such portion thereof, of which the amendment is sought. According to him, the earlier pleadings are sought to be deleted to a major extent, whereby the defendants intend to introduce altogether a fresh defence than the one which was already raised by taking out the admissions given. He would then urge that such amendment, as is sought to the written statement, is with an intention to frustrate the claim of the plaintiffs.

4. Having bestowed my anxious thought to the submissions made, it is required to be noted that in a written statement, the defendant has every right to explain his defence either by strengthening it through amendment by giving further clarifications or may also explain it by taking inconsistent stand. Reliance placed on the judgment of the Apex Court in the matter of Ram Niranjana Kajaria (supra) is worth notable.

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5. It is required to be noted here, that the petitioners are trying to amend the written statement with an intention to introduce altogether a new stand, that too by deleting earlier stand, which in my opinion, was in the form of certain admissions. Of course, the amendment to the written statement needs to be considered liberally, however, not to the extent of permitting the parties to withdraw the admissions given.

6. In view of above, in my opinion, no interference is called for in the order impugned herein. Thus, the writ petition fails and stands dismissed with no order as to costs.

7. In view of dismissal of the writ petition, Civil Application No.2979 of 2015 does not survive and stands disposed of accordingly.

(N.W. SAMBRE, J.)

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