

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

WRIT PETITION NO.9013 OF 2014

Sow. Sunitabai w/o Gulabrao Padole,  
Age 39 years, Occu. Household,  
R/o Jawala Bazar, Taluka Aundha  
Nagnath, District Hingoli

..Petitioner

Versus

1. Ramkishan s/o Deorao Rakhonde,  
Age 67 years, Occu. Agriculture,  
R/o Nalegaon, Taluka Aundha  
Nagnath, District Hingoli
2. Taramati w/o Ramkishan Rakhonde  
Age 57 years, Occu. Household,  
R/o Nalegaon, Taluka Aundha  
Nagnath, District Hingoli
3. Deepak s/o Ramkishan Rakhonde,  
Age 32 years, Occu. Agriculture,  
R/o Nalegaon, Taluka Aundha  
Nagnath, District Hingoli
4. Gajanan s/o Ramkishan Rakhonde,  
Age 30 years, Occu. Agriculture  
R/o Nalegaon, Taluka Aundha  
Nagnath, District Hingoli
5. Satish s/o Ramkishan Rakhonde,  
Died, through legal heir  
Chandabai w/o Satish Rakhonde,  
Age 28 years, Occu. Agriculture,  
R/o Kinhola, Taluka Basmath,  
District Hingoli
6. Narhari s/o Manikrao Pawade,  
Age 42 years, Occu. Agriculture,  
R/o Takalgavan, Taluka Aundha  
Nagnath, District Hingoli
7. Ganesh s/o Santukrao Pawade,  
Age 37 years, Occu. Agriculture,  
R/o Takalgavan, Taluka Aundha  
Nagnath, District Hingoli

.. Respondents

Mr A.B. Dhongade, Advocate for petitioner

Mrs. Kavita Bhale, Advocate h/f Mr P.R. Katneshwarkar, Advocate for  
respondents No.1 to 4, 6 and 7

**CORAM : N.W. SAMBRE, J.**

**DATE : 2nd December 2015**

**PER COURT**

Heard.

2. Special Civil Suit No.39 of 2012 in which the petitioner has claimed partition and separate possession.
3. An application Exh.67 in Special Civil Suit No.39 of 2012 for amendment of plaint under Order VI, Rule 17 of Code of Civil Procedure came to be rejected by the learned Civil Judge, Senior Division, Basmathnagar vide order dated 28<sup>th</sup> August 2014, as such present petition.
4. Learned Counsel for the petitioner made two fold submissions; (a) that even if the application is filed under Order VI, Rule 17 of Code of Civil Procedure, seeking addition of parties to the suit and the power vested in the Court to grant such prayer in view of express provision under Order II.
5. According to him, the application came to be rejected without considering the above referred legal position.
6. Learned Counsel for the respondents, while opposing the claim for grant of amendment and supporting the order dated 28<sup>th</sup> August 2014, passed below Exh.67 would urge that by incorporating amendment, the petitioner is seeking to bring his claim in limitation. She would then urge that the suit is at an advanced stage and in view

of proviso to Order VI, Rule 17, the application of petitioner is rightly rejected.

7. Having considered the rival submissions, it is not in dispute that the suit is for partition and separate possession. The parties, who are sought to be impleaded by way of amendment are in blood relation. Apart from above, the suit is at the stage of recording of evidence and the evidence of the plaintiff is already recorded.

8. In view of the fact that the suit is initiated by the plaintiff, in my opinion, no prejudice will be caused to the defendants, even if the amendment is granted, which is required to be granted having regard to the issue that is sought to be raised for adjudication before the learned trial Court for deciding the real controversy.

9. For the aforesaid reasons, application Exh.67 stands allowed. The order dated 28<sup>th</sup> August 2014 passed below Exh.67 in Special Civil Suit No.39 of 2012, by learned Civil Judge, Senior Division, Basmathnagar is hereby set aside. The petitioner herein to pay costs of Rs.5,000/- (Rs. Five thousand) to the respondents, which is to be deposited before the learned trial Court within a period of three weeks from today to which the respondents herein will be entitled to.

10. Writ Petition stands allowed in above terms.

**( N.W. SAMBRE, J.)**