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

WRIT PETITION NO.11750 OF 2015

1. Maheboob Imam Shaikh,
Age: 49 years, Occu: Driver

2. Mubarak Imam Shaikh,
Age: 41 years, Occu: Labour

Both R/o Gazipura,
Near Krupa Sadan English School,
Latur, District Latur

..PETITIONERS
(Orig. Defendants)

VERSUS

Maqbul Yakub Shaikh, (Chapparband),
Age: 51 years, Occu: Labour,
R/o. Gazipura, Latur,
District Latur

..RESPONDENT
(Ori. Plaintiff)

Mr Vinod B. Jadhav, Advocate for petitioners

CORAM : N.W. SAMBRE, J.
DATE : 11th December, 2015

ORAL ORDER :

This petition is by original defendants to Regular Civil Suit No.440 of 2008 for possession, seeking amendment to the written statement and counter claim, which came to be rejected by order dated 24th September, 2015, passed below Exh.135, by Joint Civil Judge Junior Division, Latur.

2. Learned Counsel appearing on behalf of the petitioners-defendants would urge that originally by way of written statement and counter claim, it was prayed that a declaration be given that the act of original defendants

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of dispossessing the present respondent-plaintiff from the suit property, is illegal. It is further claimed that an order of injunction restraining the petitioners from illegally interfering with and obstructing the possession of the petitioners over survey no.46, be ordered.

3. The application for amendment came to be moved vide Exh.135, in which paragraphs 13-A and 13-B are sought to be inserted by adding certain pleadings and also by amending prayer clause (2) by deleting the earlier prayer clause. By additional prayer, a declaration was sought that by virtue of adverse possession, the petitioners-defendants be declared as owners and possessors of the suit property, being in possession of the same since 1996.

4. While questioning the legality of the order of rejection of amendment, learned Counsel appearing on behalf of the petitioners would urge that the basic foundation in support of the amendment sought for was already there and what is sought by the amendment is only additional explanation and clarification. He would urge that there is no change in the nature of original claim, but for decree for declaration of ownership by way of adverse possession and according to him, by grant of the amendment sought for, no prejudice will be caused to the respondent-plaintiff.

5. The aforementioned submissions were considered by the Trial Court and the Trial Court noticed that if the amendment as prayed for is allowed, it changes nature of claim in the counter claim and thus rejected the

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application for amendment.

6. It is required to be noted that originally, while the counter claim was moved, a claim was made that the petitioners-defendants were dispossessed of the suit property and it be declared as illegal and also sought an injunction against the respondent-plaintiff from interfering with the possession. By way of amendment, a plea of adverse possession is sought to be raised, which in my opinion, changes entire nature of the claim as is sought to be put-forth by the present petitioners in the counter claim.

7. In view of above, in my opinion, the learned Trial Court was right in rejecting the application (Exh.135). No case for interference is made out. Writ Petition stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj