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

WRIT PETITION NO. 11216 OF 2015

Mohan s/o Sopan Mule,
age: 75 years, Occ: Agri.,
R/o Sumbha, Tq. and
District Osmanabad.

PETITIONERS

VERSUS

- 1 Anant Sopan Mule,
age: 71 years, Occ: Agri.,
R/o Sumbha,
Tq. & District Osmanabad.
- 2 Baburao Sopan Mule,
age: 68 years, Occ: Agri.,
R/o as above.
- 3 Hirabai w/o Eknath Mete,
age: 65 years, Occ: Household,
R/o Nipani, Tq. Kallam,
District Osmanabad.
- 4 Chagan w/o Babruwan Shinde,
age: 60 years, Occ: Household,
R/o Beta, Tq. Ausa,
District Latur.
- 5 Vimal w/o Balbhim Rodge,
age: 57 years, Occ: Household,
R/o Raigavan, Tq. Kallam,
District Osmanabad.
- 6 Kasturbai w/o Babusha Gund,
age: 56 years, Occ: Agri.,
R/o Nipani, Tq. Kallam,
District Osmanabad.

RESPONDENTS

Mr.Dhananjay P. Deshpande, Advocate for the petitioner

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CORAM : N.W. SAMBRE, J.

DATE : 24th November, 2015

ORAL ORDER :

1. In Regular Civil Appeal No.212 of 2014, the learned Principal District Judge, Osmanabad, rendered judgment and order dated 30th April, 2015, thereby setting aside the judgment and decree passed by the Joint Civil Judge, Junior Division, Osmanabad, on 05.09.2009, in Regular Civil Suit No.151 of 2001, and remanding the matter to the Trial Court with directions to allow Respondents-defendants to cross examine the plaintiff and his witnesses and decide the suit for partition and possession afresh, subject to costs of Rs.10,000/- to be paid by the petitioner.

2. After the suit was restored to the file, pursuant to the above referred order, an application Exhibit-106, seeking amendment, came to be moved by the present petitioner-plaintiff, alleging that the properties mentioned in Schedule "A" are the ancestral properties and properties mentioned in Schedule "B" are his self acquired properties.

3. Learned 4th Joint Civil Judge, Senior Division, Osmanabad, rejected application Exhibit-106 by order dated 14th October, 2015. Thus, the present petition.

4. Mr.Deshpande, learned Counsel appearing on behalf of the

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petitioner, while assailing the order impugned and with a view to support grant of application for amendment (Exhibit-106), would urge that after the order of remand by the learned Principal District Judge, Osmanabad, the suit was required to be decided afresh. According to him, as there are basic pleadings in relation to self acquired properties and ancestral properties, the amendment, if granted, would not change nature of the suit, but is only explanatory. He would then urge that the learned Trial Court has committed an error in rejecting application Exhibit-106, by observing that the application is moved at a belated stage.

5. Having considered the above referred submissions, this Court is not inclined to interfere in the order passed by the learned Trial Court for the reasons (a) the issue, that is sought to be raised by way of amendment, was very much available to the petitioner-plaintiff when he initially filed suit for partition. No explanation is forthcoming as to why the amendment sought for was not incorporated at the relevant time. Apart therefrom, when the order of remand was passed, even the said course was open to the present petitioner-plaintiff and he could have moved an application for amendment of plaint even in appeal, which is permissible in law. The application, as is moved before the trial Court after remand order was passed in appeal, is nothing but an improvement that is sought to be made by the petitioner-plaintiff, in relation to his claim in the suit, as in the order of remand passed by the first appellate Court, the lower appellate court has permitted the defendants to cross examine the plaintiff and his witnesses. As such, what is contemplated is to commence the trial, after

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the remand, from the stage of cross examination of the plaintiff and his witnesses.

7. In the background of provisions of Order VI, Rule 18 of the Code of Civil Procedure, this Court cannot lose sight of the fact that the trial in the suit has already commenced and is at advanced stage.

8. In view thereof, no illegality could be noticed in the impugned order warranting exercise of extraordinary jurisdiction of this Court. Thus, the petition fails and stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

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