

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

**WRIT PETITION NO.492 OF 2015**

- 1] Subhan S/o Manikrao Shendge  
Age : 65 years, Occu : Agril.,  
R/o Makhani, Tq. Gangakhed,  
Dist.Parbhani.
- 2] Nagnath S/o Manikrao Shendge  
Age : 60 years, Occu : Agril.,  
R/o Makhani, Tq. Gangakhed,  
Dist.Parbhani.  
At present  
R/o Sarfaraj Nagar, Parbhani.
- 3] Balasaheb S/o Manikrao Shendge  
Age : 50 years, Occu : Agril.,  
R/o Makhani, Tq. Gangakhed,  
Dist.Parbhani.
- 4] Narayan S/o Manikrao Shendge  
Age : 45 years, Occu : Agril. & Business,  
R/o In front of Govt. Hospital  
Gangakhed, Tq. Gangakhed,  
Dist.Parbhani.
- 5] Sau.Daivshala W/o Nagnathrao Shendge  
Age : 55 years, Occu : Household,  
R/o Makhani, Tq. Gangakhed,  
Dist.Parbhani.

..PETITIONERS  
[Orig.Deft.No.3 to 7]

**VERSUS**

Mahipati S/o Manikrao Shendge  
Age : 60 years, Occu : Service,  
R/o Makhani, Tq. Gangakhed,

Dist.Parbhani.  
At present R/o Parbhani,  
Through his G.P.A. holder  
Sau.Dhondubai W/o Mahipati Shendge,  
Age 55 years, Occu : Household,  
R/o Makhani, Tq. Gangakhed  
Dist.Parbhani, At Present  
R/o Parbhani.

..RESPONDENT  
[Orig.Plaintiff]

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Advocate Shri Hanmant V.Patil for petitioners.  
Advocate Mr.R.R.Karpe h/f Advocate Mr.S.S.Gangakhedkar  
for respondent.

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**CORAM: MANGESH S PATIL,J.**  
**DATE : 07.09.2021**

**ORAL JUDGMENT:**

Heard. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.

2] The petitioners are original defendants aggrieved and dissatisfied by the order whereby the learned Judge has allowed the respondent plaintiff to amend the plaint.

3] The learned advocate for the petitioners would submit that the proposed amendment is in the nature of an explanation in respect of the petitioners contention in their written statement about the respondent having conceded to the fact of their being a previous partition effected between the parties. He would submit that during his cross

examination in the earlier round of litigation the respondent specifically admitted such fact. As the petitioners now have come with a contention to demonstrate as to how in view of a previous partition the present Suit is not maintainable that the respondent has now sought to amend the plaint and trying to make amends to explain away the admissions. The learned Judge ignoring all these facts and circumstances has allowed the amendment to be carried out illegally.

4] The learned advocate Mr.Karpe holding for Advocate Mr.Gangakhedkar submits that at this stage veracity or otherwise of the proposed amendment cannot be gone into. The so called admission given by the respondent in the previous litigation is now being sought to be explained by incorporating the amendment. No right which has vested in the petitioners is being sought to be divested. Ultimately it is a matter of proof. Attempt of the respondent cannot be shunted at the threshold.

5] The learned advocates of both the sides also simultaneously unanimously submit that since the Suit has not been stayed in the present Writ Petition, the hearing has been concluded and the Suit is now fixed for arguments.

6] I have carefully considered the rival submissions and the impugned order.

7] True it is that the respondent has filed the Suit seeking a general partition. It is also apparent from the copies of his testimony recorded in the earlier round of litigation i.e. Regular Civil Suit No.300/2004 that in cross examination he had admitted of there being a previous partition.

8] But then, the proposed amendment is in the nature of furnishing an explanation to take exception to the admissions given in the previous round of litigation. Whether and to what extent he would be able to explain these admissions cannot be prejudged. Already the parties have participated in hearing and the Suit is ripe for arguments and final disposal. It would always be open for the petitioners to demonstrate and establish as to how the previous admission would defeat the present Suit.

9] Taking into account all the aforementioned facts and circumstances, in my considered view, this Court, on merits as well as considering the stage of the Suit, cannot intervene.

10] The Writ Petition is dismissed. The Rule is discharged.

**[MANGESH S. PATIL,J.]**