

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 5502/2021

Smt. Vibhavari wd/o Shantaram Deshpande
..VS..

Shri Padmanabh Shriniwas Deshpande and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Mardikar, Advocate for the petitioner

CORAM : AVINASH G. GHAROTE, J.

DATED : 23/12/2021

Shri Mardikar, learned Counsel for the
petitioner.

2. The impugned order which rejects the application for amendment of the plaint, filed at the stage of final argument has been challenged. It is submitted that by the amendment, amongst other averments, a prayer for possession is sought to be inserted in the plaint, which according to the learned Counsel for the petitioner does not change the nature of the proceedings.

3. I am unable to agree with the contention for the reason that the suit filed by the plaintiff/petitioner is for declaration and perpetual injunction regarding Power of Attorney dated 04.06.2007, executed by the plaintiff in favour of the defendant no. 1. In the entire plaint, the position was that the plaintiff claimed to be in possession

of the property in question. Now this position is sought to be given up and decree for possession is sought to be claimed by way of an amendment as well as the relief of addition of certain parties. This position cannot be permitted to be brought on record at a stage when the suit is fixed for final argument, that too for indirectly challenging the Sale Deeds of the years 2007 and 2009, which the defendant no. 1, as Power of Attorney holder of the plaintiff, has executed in favour of third party. The learned trial Court has considered the position correctly, in view of which, I do not see any reason to interfere in the impugned order. Accordingly, the writ petition is dismissed. No costs.

JUDGE

SANDIP
MAHADEV
GATE

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