

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

Writ Petition (WP) No. 4151 of 2022

Vijaya Wd/o Chandrakant Donge and others

Versus

Pravin S/o Jaisingh Padamgirwar and another

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

Court's or Judge's Order

Shri N.G.Jetha, Advocate for the petitioners.

Shri M.R.Joharapurkar, Advocate for the respondents

CORAM : ANIL S. KILOR, J.

DATED : 29th MARCH, 2023.

Heard.

2. In this writ petition, order below exhibit 78 dated 7th January, 2022 passed by the 2nd Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No. 1420 of 2013 allowing the application for amendment filed by the plaintiffs/respondents under Order VI Rule 17 of the Code of Civil Procedure (in short referred as “CPC”), is under challenge.

3. The respondents/plaintiffs filed a suit for specific performance of contract, declaration and permanent injunction with alternative relief for damages.

4. It is the case of the plaintiffs that at the time of filing of the suit they were in possession of the suit property and subsequently, they lost their possession after filing of suit and therefore the application for amendment was moved for addition of para 23-A and prayer clause no.2-a to the effect that the plaintiffs be put in possession of the suit property and the same came to be allowed vide impugned order dated 7th January, 2022. Hence, this petition.

5. I have heard learned counsel for the respective parties.

6. Shri Jetha, learned counsel for the petitioner submits that the learned trial Court ignoring the findings recorded in the judgment passed by this Court dated 8th October, 2013 in the writ petition 1582 of 2013, the application was allowed. It is submitted that, this Court has categorically observed that the respondents could not point out in what capacity they are in possession of the suit property. It is submitted that findings of this Court are sufficient to show that without any authority the plaintiffs are claiming possession.

7. In reply, Shri Joshi, learned counsel for the respondent points out that at the time of filing of the suit they were in possession of the suit property and that

has been recognized by this Court while recording findings in the judgment dated 8th October, 2013. It is submitted that subsequently the respondents came across document i.e. Sauda Chitti and as such the application for amendment was moved. He submits that whether the respondents have any authority that can be adjudicated by the Civil Court in a trial. He, therefore, submits that there is no illegality committed by the learned trial Court in allowing the application for amendment.

8. In the light of rival contentions of the parties, I have perused the record and the impugned order.

9. The judgment of this Court dated 8th October, 2013 passed in Writ Petition No. 1582 of 2013, shows that, this Court has also recorded that the respondents were in possession of the suit property. However, it was observed that in what capacity they are in possession that was not established.

10. In the said backdrop considering the case of the plaintiffs that subsequent to filing of suit they lost the possession of the suit property and they came across a document namely 'Sauda Chitti', the application for amendment was moved thereby seeking to add prayer

clause as regards possession which is permissible under the provision of Section 22 of the Specific Relief Act.

11. In the circumstances, I find that the learned trial Court has not committed any perversity in allowing the application for amendment. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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