



3953-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3953 OF 2023
(Madhukar Ramaji Madavi Vs. Jyoti Jagdish Sayam)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri V.N. Morande, Counsel for the petitioner.
Ms Radha Mishra h/f Shri S.R. Chakravarti, Counsel for
the respondent.

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CORAM : ANIL L. PANSARE, J.
OCTOBER 8, 2024

On 22/7/2024, following order was
passed :

- “ Heard for sometime.
2. The Petitioner/Original Plaintiff has filed a suit simplicitor for injunction on the ground that the property under question has been bequeathed to him by Shri Laxman Madavi, cousin of the Petitioner. The Respondent/Original Defendant is daughter of Laxman's sister. Laxman did not marry. The Respondent has objected the Will. It is well settled that the prepounder of the Will has to prove the Will to claim benefits thereunder.
3. The question, therefore, is whether the suit simplicitor for injunction is maintainable.
4. The learned Counsel for Petitioner seeks time to take instructions. Time granted.
5. Stand over on 19th August, 2024.”

2] In response to the aforesaid order, the learned Counsel for the petitioner submits that application, seeking amendment in the plaint, has been moved and is pending consideration before the trial Court.

3] If that be so, the purpose will be served if while dismissing the petition on the ground that the suit was not maintainable as filed liberty is granted to the petitioner to file application afresh seeking injunction, if the amendment, as sought, is allowed by the trial Court. Order accordingly.

4] The trial Court, however, shall not get influenced by the observations made by this Court while deciding the application filed by the petitioner for amendment in the plaint.

5] The writ petition is disposed of in above terms. No order as to costs.

(ANIL L. PANSARE, J.)

Sumit