



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

WRIT PETITION NO. 5424/2025

MADHUKAR NILKANTHRAO KUNDALWAR

VERSUS

SUREKHA YASHWANTRAO KUNDALWAR AND ANOTHER

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

Court's or Judge's order

Shri Sandeep Marathe, counsel for petitioner.
Shri A. A. Madiwale AGP, for respondent no. 2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : SEPTEMBER 17, 2025

1. Heard the learned counsel for petitioner.
2. The petitioner has challenged the orders passed by the trial Court on exhibit 38 and 41, both dated 24.07.2024 allowing the application for amendment of the plaint.
3. Learned counsel for petitioner submits that the petitioner who is defendant had earlier filed an application for rejection of plaint under Order VII rule 11 of Civil Procedure Code 1908, which was partly allowed holding thereby that the suit for declaration about mutation was dismissed and the plaint was rejected to that extent, however, the suit was ordered to be proceeded with respect to the relief of permanent injunction. It is submitted that by way of proposed amendments, the plaintiff intends to incorporate relief of declaration with respect to the will which is an attempt to indirectly claim the same relief.
4. It is also submitted that the plaintiff has not demonstrated exercise of due diligence, neither the Court has rendered any

findings on the aspect of due diligence while passing the impugned orders.

5. Issue notice to the respondents returnable 15th October 2025.

6. Learned Assistant Government Pleader Shri A. A. Madiwale waives service of notice on behalf of respondent no 2.

7. In the meantime, ad interim relief in terms of prayer clause (iv) shall operate, which is reproduced below;

“iv. By an interim order stay the effect and operation of impugned orders dated 24.07.2024 passed below Exh. No. 38 and Exh. No. 41/D in the R.C.S. No. 68/2016 pending before the Learned Civil Judge Senior Division, Yavatmal.”

(PRAFULLA S. KHUBALKAR, J.)