

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

WRIT PETITION NO.534/2016

Pyaree Begum Wd/o Amanullah Khan

..VS..

Saeeda w/o Mohhamed Mukhtar and others

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 27.6.2016.

Heard Shri A.N. Ansari, Advocate for the petitioner and
Shri S.Z. Qazi, Advocate for the respondent No.1.

The respondent No.1 had filed Regular Civil Suit No.411/2002 against Mst. Fatmabi (mother of petitioner), Abdul Kalam - brother of present petitioner (present respondent No.2), Abdul Shakur - brother of present petitioner (present respondent No.3) and Abdul Kadir - brother of present petitioner (present respondent No.4) praying for decree for possession. The suit was decreed by the judgment dated 28th February, 2005. The Regular Civil Appeal No.111/2007 filed by the original defendants challenging the judgment and decree passed by the trial Court was dismissed on 7th January, 2008. The original defendants had filed Writ Petition No.923/2008 challenging the judgment and decree passed by the subordinate Courts. During the pendency of this petition, Mst. Fatmabi died and the present petitioner, Shahzadi Begum (present respondent No.5) and Shahnaz Begum (present respondent No.6) got themselves impleaded as co-petitioners along with Abdul Kalam, Abdul Shakur and Abdul Kadir. The Writ Petition No.923/2008 is dismissed on 8th July, 2014. This Court has maintained the decree passed by the subordinate Courts.

In the above facts, the submission made on behalf of the petitioner that she was not party to the civil suit and she was brought on the record in writ petition as legal heir of original defendant Mst. Fatmabi cannot be accepted. Though the submission, at the first blush is appealing, fact remains that the judgment passed in Writ Petition No.923/2008 is against the petitioner and by the judgment passed in Writ Petition No.923/2008 the judgment and decree passed by the subordinate Courts is maintained. The petitioner cannot be permitted to raise objection as raised by the present petition, at this stage.

Shri S.Z. Qazi, Advocate for the respondent No.1 has referred to the judgment given in the case of *Shkuntala Vasant Pahadi and others V/s. Purushottam Vasant Pethe and others* reported in **(2007) 3 SCC 123** and has submitted that the challenge as raised by the petitioner, without there being anything on the record to show that any fraud is played by the parties when decree came to be passed in Regular Civil Suit No.411/2002, cannot be considered.

The Executing Court has properly appreciated the controversy and has rightly rejected the application filed by the petitioner. I do not find any patent illegality or perversity in the impugned order. It cannot be said that the Executing Court has exceeded its jurisdiction or has failed to exercise the jurisdiction vested in it.

I do not see any reason to interfere with the impugned order. The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE