

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 WRIT PETITION NO.6799 OF 2018

ANIS JAHAN BEGUM FAIZ MOHAMMAD (DIED) THROUGH LRS.
MOHAMMAD ABDUL KADIR AND OTHERS

VERSUS

KHAIRUNNISA BEGUM W/O. LATE FAROOQUE MOHAMMAD KHAN
(DIED) THROUGH LRS. NABEGHA MASOOD NIZAMODDIN ULDAY
AND OTHERS

...

Advocate for Petitioners : Shri Shaikh Mujtaba Gulam Mustafa

Advocate for Respondent Nos.3(A) to 3(F) : Shri D. A. Naik

Advocate for Respondent Nos.1(A) & 2 : Shri Ameya J. Bhat

...

CORAM : P.R.BORA, J.

DATE: 12th June, 2019

PER COURT:-

1. With consent of learned Counsel appearing for the parties, the present petition is heard finally.

2. The material on record reveals that an application was filed by the present petitioners in Special Darkhast No.17 of 2017 pending before the Court of Civil Judge, Senior Division, Aurangabad, raising an objection to the contention of decree holder No.2 claiming herself to be the only legal heir of deceased decree holder No.1 namely Khairunnisa Begum w/o. Farooque Mohammad Khan. It was the contention of the petitioners that deceased decree holder No.1, since died without leaving behind any male issue, the judgment debtors i.e. present petitioners

being legal heirs of the husband of deceased decree holder No.1, were entitled to the share in her property in addition to the share for which they are entitled in the property in the name of their deceased father Farooque. In the circumstances, a request was made to call upon decree holder No.2 to explain as to how she alone claims to be entitled for the property allotted to the share of deceased decree holder No.1.

3. The record further reveals that when the present application was taken up for hearing by the Executing Court, none of the present petitioners, who had filed the said application, were present before the said Court. The said Court on the basis of averments in the application and other documents available on record, rejected the said application observing that the objections raised in the application were too vague.

4. The learned Counsel for the petitioners has come out with a limited prayer in the petition while arguing the present petition that had the opportunity been given to the present petitioners, the present petitioners would have certainly satisfied the Executing Court as to how their application was maintainable. The learned Counsel submitted that since no opportunity of

hearing was given, the facts and legal provisions could not be correctly brought to the notice of the said Court. The learned Counsel, in the circumstances, has prayed for allowing the petition by remitting the matter to the Executing Court to decide the application filed by the petitioners afresh by giving appropriate opportunity to the present petitioners.

5. The request so made by the learned Counsel for the petitioners is opposed by the learned Counsel appearing for the respondents. The learned Counsel submitted that legal provisions in regard to the objection raised are so clear that no remand is necessary and the contention raised on behalf of the petitioners that they are entitled to the share in the property of deceased Khairunnisa after her death to the exclusion of brother of deceased Khairunnisa is against the settled principles of law. The learned Counsel further argued that the said application itself is not maintainable in view of the law laid down by this Court in the case of ***Smt. Ramrathibai Wd/O Sivnath Pardeshi vs. Surajpal S/o Bhulai Chaudhari and Others [AIR 1995 Bom.445]***.

6. I have considered the submissions made by learned Counsel appearing for the parties. I have perused the impugned order and the relevant provisions in the Mohammaden Law. From

the material on record, it is quite evident that before deciding the application submitted by the present petitioners, the present petitioners were not heard. From the order passed, it is difficult to ascertain whether any opportunity was given to the present petitioners to make submissions on their application. It is further clear from the impugned order that instead of deciding of legal aspects in the matter, the Court has only observed that the objections raised in the application are too vague. In the circumstances, I deem it appropriate to remit the matter to the Executing Court to decide the application filed by the present petitioners at Exh.21 afresh by giving due opportunity of hearing to the parties concerned. Order accordingly. The Executing Court shall decide the said application as expeditiously as possible. The petition stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT