

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.5494 OF 2018

Usha Padmakar Deshmukh (through Lrs.)

...Petitioners

vs.

Narendra Purushottam Chapalgaonkar & Ors.

...Respondents

Mr.Kushal Mor a/w. Mr.Mayank Sharma & Mr. Marmik Shah for the
Petitioners.

Ms. A. S. Pai, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.**

DATE : 05/03/2019.

P.C.:

. The petitioner is reported to be no more. She has expired in December 2015. The present petition has been filed in April 2018 through her husband who then was a practicing advocate. The controversy arises out of Special Civil Suit No.434/1998 filed by late Smt. Usha Deshmukh for partition and separate possession. The suit is still pending. Her husband was trying to obtain orders appointing himself as next friend to prosecute that suit. He has been appointed as her next friend on 12/9/2013.

2. According to the husband, the suit remained pending or was kept pending because of influence of one of judges of this Court (now retired). He filed application under section 340 of Cr.P.C. naming said Judge, as also relative and one advocate. On 9/7/2013 that application was rejected by Civil Judge Senior Division on 12/9/2013. The petitioner thereafter filed appeal against that order and appeal has also been dismissed vide order dated 7/2/2018 by Additional Sessions Judge. Both these orders are questioned in the present matter with other prayers.

3. We have heard learned counsel appearing for the petitioner at some length. There is no material on record to show that the Judge named has at any time in the suit interfered either directly or indirectly. The allegations in paragraph 2 of the application under section 340 of Cr.P.C. also claim that two other judges of this Court did not grant justice to the petitioner because of influence of the Judge.

4. The order sheet in the matter which may have demonstrated reasons for adjournment are not produced before us. Only because the matter remained pending or was de-part heard by one of the judges, an inference of influence has been drawn. Even today there is no prayer before us in writing to expedite the Civil Suit.

5. We have perused the orders passed under section 340 and 341 of Cr.P.C. In absence of any material permitting initiation of action, the same do not appear to be either perverse or without jurisdiction.

6. During pendency, learned counsel (appointed) for the petitioner has submitted that the petitioner-advocate himself is now ailing and bedridden. We in this situation find that interest of justice can be met by directing the Trial Court to expedite the Civil Suit which is pending since 1998 and make attempts to decide it at the earliest and in any case within a period of 8 months from the date of communication of this order.

7. With these directions, we reject the writ petition. No costs. The charges of learned counsel (appointed) be paid as per rules.

(REVATI MOHITE DERE, J.)

(B. P. DHARMADHIKARI, J.)