

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

WRIT PETITION NO.827/2019

Smt. Sharda Suresh Singh Baghel Vs. Kamal Singh d/o Maharajdeen Singh and others

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.N.Badhe, Advocate for petitioner.
Shri M.P.Khajanchi, Advocate for respondent nos. 2 & 3.

CORAM : A.S.CHANDURKAR, J.

DATED : NOVEMBER 14, 2019.

The challenge raised in the present writ petition is to the order dated 19.11.2018 passed below Exhibit 70 in Regular Darkhast No.39/1984 by which the Executing Court has upheld the objections raised by the respondents herein to the continuation of the execution proceedings and has thus disposed of those execution proceedings.

The facts in brief giving rise to the present proceedings are that one Meerabai along with her foster son Babulal had filed a Civil Suit No.144/1976 seeking declaration as to their right of ownership in respect of field Survey No.6/1 admeasuring 29 acres. It was the case of Meerabai that the suit filed was owned by her husband – Bharatsingh. Bharatsingh had put Meerabai in possession by executing an agreement dated 10.02.1952. As per that agreement Meerabai was to continue in possession till her lifetime and after the death of Meerabai her foster son Babulal was to continue in possession. Bharatsingh expired on 01.05.1974. Since the defendants sought to obstruct the plaintiffs, the aforesaid suit was filed. The trial Court after considering the evidence on record held that on the basis of the

agreement executed by Bharatsingh, Meerabai had a right to enjoy the suit property. The suit was accordingly decreed. A finding was recorded that Meerabai had a right to remain in possession of the suit field during her lifetime. The said decree passed by the trial Court was subjected to challenge. During the pendency of Second Appeal No.116/1992, Meerabai expired on 09.09.1992. Prior to her death she executed a Will in favour of the petitioner on 16.07.1992. The petitioner-Sharda sought to be impleaded as legal heir of Meerabai by invoking the provisions of Order XXII Rule 5 of the Code of Civil Procedure, 1908 (for short, 'the Code'). That prayer was accepted and the petitioner was impleaded as legal heir of Meerabai in that second appeal. Second plaintiff - Babulal expired on 12.02.1994. The said second appeal was ultimately dismissed on 28.04.2008. Though a review application was filed that was also dismissed on 18.01.2014. The respondents thereafter approached the Hon'ble Supreme Court. On 28.03.2014 the Special Leave Petition came to be dismissed by observing that there was no challenge to the veracity of the Will executed by Meerabai in favour of the petitioner. The execution proceedings that were initiated by Meerabai were pending with the Executing Court. In those proceedings the respondents raised an objection that on account of death of Meerabai as well as second plaintiff – Babulal, her life interest came to an end. Meerabai had no right therefore to execute any Will. On that count, it was stated that the execution proceedings were not liable to be continued. By the impugned order, the Executing Court has accepted that objection and by holding that Meerabai had limited interest in the suit property, the petitioner could not claim any right whatsoever on the basis of the Will executed by Meerabai in her favour. Being aggrieved, the petitioner has challenged the said order.

Shri R.N.Bade, learned counsel for the petitioner submitted that the Executing Court committed an error in holding that the petitioner was not entitled to execute the decree in question. He submitted that the right of Meerabai had been recognized as a owner of the suit property by virtue of the decree passed in Civil Suit No. 144/1976. That decree had attained finality and even the Hon'ble Supreme Court had observed that the Will executed by Meerabai in favour of the petitioner had not been challenged. Since the decree had attained finality, the petitioner was entitled to execute the same. It was not open for the Executing Court to go behind that decree and hold that Meerabai had no right to execute any Will in favour of the petitioner. He referred to the provisions of Section 14 (1) of the Hindu Succession Act, 1965 (for short, 'the said Act') and the decisions in *Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and ors.* 2015 AIR SCW 6258, *Tulsabai w/o Narayanrao Deshpande (died) through LRs - Madhavrao Narayanrao Deshpande and ors. Vs. Sakharam Bhanu Chavan and ors.* 2006 (2) Mh. L. J.219 and *AIR 2012 Himachal Pradesh 50* in that regard. By recording such finding that the petitioner was not entitled to continue the execution proceedings, the Court committed an error. The right of the petitioner stood recognized by virtue of the fact that she was impleaded as a legal heir of Meerabai under the provisions of Order XXII 22 Rule 5 of the Code. He also referred to the provisions of Order XXI Rule 16 of the Code to submit that the Executing Court could have invoked those proceedings to enable the decree to be executed. It was thus submitted that in any event the execution proceedings were not liable to be dismissed.

On the other hand Shri M.P.Khajanchi, learned counsel for the respondent nos. 2 and 3 supported the impugned

order. He submitted that though the decree passed in Civil Suit No. 144/1976 had attained finality, it had been held therein that Meerabai had life interest in the suit property and that she was to enjoy the same only during her lifetime. Since she had limited interest in the suit property, she could not have executed Will dated 16.07.1992 in favour of the petitioner. He referred to the provisions of Section 14 (2) of the said Act to urge that when a limited interest was created in favour of Meerabai by execution of the agreement dated 10.02.1952 by Bharatsingh, the parties could not go behind the same. Since Meerabai had limited interest, the petitioner could not claim any higher right from her. He infact submitted that permitting the petitioner now to continue in execution proceedings would amount going behind the decree in view of the fact that it was held by the Courts that Meerabai had limited life interest in the property. That finding had attained finality and by dismissing the execution proceedings, the Executing Court had merely obeyed the decree. It was then submitted that the permission granted to the petitioner to be impleaded as legal heir of Meerabai under the provisions of Order XXII Rule 5 of the Code would be of no avail to claim any higher right. That permission was granted only with a view to represent the estate of Meerabai and nothing further. According to the learned counsel, the provisions of Order XXI Rule 16 of the Code had no application in the facts of the present case. In support of his submissions, the learned counsel relied upon the following decisions :

- 1] Kamlabai and others Vs. Mangilal Dulichand Mantri (1987) 4 SCC 585
- 2] Victoria Vs. K.V.Naik and others (1997) 7 SCC 23.
- 3] K.Sankaran Nair (Dead) through LRs. Vs. Devaki Amma Malathy Amma and ors. (1996) 11 SCC 428;
- 4] Shivdev Kaur (Dead) by LRs and ors. Vs. R.S.Grewal,

(2013) 4 SCC 636.

- 5] Ranvir Dewan Vs. Rashmi Khanna and ors.
(2018) 12 SCC 1.
- 6] Kothi Satyanarayana Vs. Galla Sithayya and ors.
(1986) 4 SCC 760.
- 7] Jaladi Suguna (Deceased)through LRs Vs.
Satya Sai Central Trust and Ors. (2008) 8 SCC 521.
- 8] Mahanth Satyanand Vs. Shyam Lal Chauhan.
2018 SCC Online SC 355
- 9] J & K Bank Ltd. and ors. Vs. Jagdish C.Gupta.
(2004) 10 SCC 568.

I have heard the learned counsel for the parties at length and with their assistance I have perused the material placed on record. The decree passed in Civil Suit No.144/1976 has attained finality. In the judgment of the trial Court dated 01.03.1984, it has been held in para 37 that by virtue of the agreement executed by Bharatsingh, the plaintiff-Meerabai had a right to possess the suit field during her lifetime in exercise of her right of maintenance. She had no right to sell the suit field. In para 43 of the said judgment, it has been further held that Meerabai had limited interest in the suit field during her lifetime and that the claim of plaintiff no.2-Babulal did not arise in view of the fact that Meerabai was alive. From these findings that have now attained finality, it becomes obvious that right of Meerabai as a limited owner under Section 14(2) of the said Act stood recognized. The fact that such right was limited and was received in lieu of maintenance indicates that the same is a restricted right under Section 14(2) of the said Act. The ratio of the decisions in *Shivdev Kaur* , *Ranvir Dewan* and *Kothi Satyanarayana* (supra) support that conclusion. It has been held that the provisions of Section 14(2) of the said Act are by way of an exception to the provisions of Section 14(1) of the said Act. In the light of this legal position and in view of the findings recorded that Meerabai

had no right to alienate the suit property considering her limited interest therein, the petitioner cannot claim any right whatsoever by virtue of the Will executed on 16.07.1992. This aspect of the matter has been rightly considered by the Executing Court while passing the impugned order.

Though it is a fact that the petitioner was impleaded as legal heir of Meerabai in Second Appeal No. 116/1992 and the fact that Meerabai had executed a Will in favour of the petitioner was referred to, that aspect cannot give further right to the petitioner to continue the execution proceedings. The impleadment was in exercise of power under Order XXII Rule 5 of the Code. As held in *Jaladi Suguna and Mahanth Satyanand* (supra) determination of any question as to status of a legal heir for the purposes of Order XXII Rule 5 of the Code is for a limited purpose and such determination does not give any further right to the parties during final contest. Hence nothing much would turn on the fact that the petitioner was impleaded as the legal heir of Meerabai.

The provisions of Order XXI Rule 16 of the Code also would not come into operation as there is no transfer of any decree in favour of the petitioner. The execution proceedings as filed by Meerabai during her lifetime were in fact not liable to be continued after her death on 09.09.1992. In fact, in the present proceedings it is not permissible for the petitioner to re-open the question as to whether the petitioner could claim any right on the basis of the Will dated 16.07.1992. That aspect stands adjudicated in the civil suit filed by Meerabai and permitting the petitioner to re-open that aspect would result in going beyond the decree that has attained finality. The observations in *J & K Bank Ltd.* (supra) supports the stand taken by the respondents.

It is thus found that the Executing Court has rightly considered all relevant aspects while allowing the objection that was raised by the respondents herein. The execution proceedings have rightly been disposed of as nothing survives in the decree to be executed now. I do not find any reason whatsoever to interfere with the impugned order. The writ petition is thus dismissed with no orders as to costs.

JUDGE

Andurkar.