

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO.1201 OF 2016

PUSHPABAI TUKARAM NEMADE AND OTHERS
VERSUS
HEMLATA MANOHAR INGALE AND ANOTHER

Mr.P.R. Katneshwarkar, Advocate for the petitioners.
Mr.A.G. Talhar a/w. Mr. Shaikh Naseer, Advocate for the
respondent Nos. 1 and 2.

CORAM : N.J.JAMADAR, J.
DATE : 16.03.2021

PC :-

01. Heard learned Counsels for the petitioners and
respondent Nos.1 and 2.

02. The challenge in this petition is to an order
dated 08.01.2016 passed by the learned Civil Judge,
Junior Division, Raver, on an application [Exh.14] in
R.D. No.18 of 2013, whereby the executing Court rejected
the application preferred by the JD No.2 – petitioner
No.2 herein, under section 47 read with section 151 of
the Code of Civil Procedure, 1908, for amendment in the
preliminary decree, consequent to the fluctuation in the
share of the parties, in view of the pronouncement of the
Supreme Court in the case of Prakash and Others Vs.
Phulavati and Others, 2016 AIR (SC) 769.

03. The learned Civil Judge was of the view that, being an executing Court, it cannot go behind the decree and thus rejected the application.

04. Initially by an order dated 02.02.2016, this Court, while issuing notice after noting pronouncement of the Supreme Court in the case of Ganduri Koteshwaramma & Anr. Vs. Ghakiri Yandi & Anr., 2011 (9) SCC 788, had stayed further proceeding in RD No.18 of 2013.

05. Learned Counsel for respondent Nos.1 and 2 submits that legal position as regards the entitlement of the daughter, in view of section 6 of the Hindu Succession Act, is now settled by the Three Judges Bench judgment of the Supreme Court in the case of Vineeta Sharma Vs. Rakesh Sharma and Others, 2020(9) SCC 1. The Supreme Court, after answering the reference, has in terms held that the view to the contrary expressed in Prakash Vs. Phulavati and Mangammal Vs. T.B. Raju & Ors., stands overruled. Learned Counsel for the petitioners fairly submits that the legal position now stands set at rest by the aforesaid Three Judges Bench pronouncement.

06. Since the very foundation of application [Exh.14], was the pronouncement of the Supreme Court in the case of Prakash Vs. Phulavati and others, which has

been expressly overruled, the challenge to the impugned order does not merit entertainment.

07. Hence, the petition stands dismissed.
 The interim order stands vacated.
 The executing Court is requested to proceed with the execution of the decree in question in accordance with law.

[N. J. JAMADAR, J.]