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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7107 OF 2018

Mrs. Indubai Bhiku Dumale and anotherPetitioners

V/s.

Smt. Thakubai Revali DhumaleRespondents
(Decd) Through LR's and another

Ms. Ruchita Kadam i/b Mr. Abhishek Deshmukh for the Petitioners
Mr. Dilip Bodake for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2021.

P.C.:

1] In R.C.S. No. 101 of 1992 initiated by the Respondent Housabai, a Decree for partition came to be passed on 30/12/2003 which was confirmed in Appeal.

2] Claim of the Petitioner in the execution proceedings is, both of them need to be added as parties as they are in possession of the property by virtue of Will Deed executed in their favour. Mutation

entry dated 23/09/2005 is sought to be relied on.

3] So as to substantiate the contention, learned counsel for the Petitioner would draw support from the Judgment of the Apex Court in the matter of **Har Vilas Vs. Mahendra Nath and Others [(2011) 15 Supreme Court Cases 377]** so as to claim that Petitioner should have been added as party to the execution proceedings pursuant to provisions of Order XXI Rule 35, 97 & 101 of the Code of Civil Procedure, 1908.

4] If the aforesaid contentions are appreciated qua the order impugned whereby the prayer is rejected by the Executing Court for the impleadment, the fact remains that husband of the Petitioner no. 1 and father of Petitioner no. 2 is party to the Decree in question and has not chosen to prefer any Second Appeal.

5] Apart from above, on facts, Petitioner is unable to establish her right in the property by virtue of alleged Will Deed and the mutation entry as neither Will Deed is produced nor the mutation entry could

be readable.

6] In the aforesaid background, order impugned passed by the Executing Court rejecting the prayer for impleadment appears to be justified.

7] In that view of the matter, no case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]