

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2216 OF 2021

Shri Mitaram s/o Chimna Sursaut and others vs. Parasram s/o Dulichand
Surayawanshi (Died) through LR.

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

Court's or Judge's Orders.

Mr. U. K. Bisen, Advocate for petitioners.
Mr. P. J. Mehta, Advocate for respondent No.1.
Mr. A. S. Tiwari, Advocate for respondent No.3 to 5.

CORAM : MANISH PITALE J.

DATE : 25/03/2022

By this writ petition the petitioners (original judgment debtors) have challenged order dated 12/03/2021, passed by the Civil Judge Junior Division, Tirora i.e. Executing Court, whereby an application at Exh.53 filed by one Dnyaneshwar Mahadeo Kosarkar was allowed and he was permitted to be brought on record in place of the original decree holder.

2. In the present case, a suit for declaration and possession was filed by the original plaintiff i.e. Prasaram Suryawanshi against the petitioner. It is an undisputed fact that the suit was decreed and the said decree attained finality by dismissal of Second

Appeal by this Court. At the stage of execution of the decree, the said Dnyaneshwar Kosarkar sought to be brought on record as legal representative of the original decree holder, on the strength of a Will dated 04/04/2015, executed by the decree holder in his favour. The said application was allowed. By order dated 27/04/2017, this Court allowed the writ petition and set aside the order passed by the Executing Court by directing that the widow and all the children of the deceased decree holder would have to be put to notice and heard before considering the application moved by the said Dnyaneshwar Mahadeo Kosarkar.

3. In pursuance of order passed by this Court, the widow, sons and daughter of the decree holder were put to notice, but they chose not to participate in the proceedings before the Executing Court and after hearing the applicant – Dnyaneshwar Mahadeo Kosarkar i.e. the judgment debtor, the Executing Court passed the impugned order, allowing the application and holding that the applicant was indeed entitled to continue the execution proceedings as legal representative of the original decree holder.

4. In this writ petition, on 25/06/2021, while issuing notice, this Court thought it fit to direct

the petitioner to add the widow, sons and daughter of the original decree holders as respondents. Notice was issued to them, as also to the original applicant before the Executing Court. This Court directed the parties to maintain status-quo in the meanwhile.

5. Upon notice being served on the respondents, they have appeared through counsel. In the meanwhile, the widow of the original decree holder also passed away and therefore, only the sons and daughter have appeared through counsel before this Court. It is significant that the said respondent Nos.3 to 5 i.e. sons and daughter of the original decree holder have filed an affidavit, which is signed by all the three respondent Nos.3 to 5 and their counsel. It is categorically stated that the Will executed in favour of the respondent No.1 i.e. original applicant Dnyaneshwar Kosarkar is absolutely legal and valid and that the said respondents have no grievance regarding the same. In fact, they have submitted that the writ petition deserves to be dismissed.

6. Mr. Bisen, learned counsel for the petitioners submitted that since the applicant before the Executing Court i.e. beneficiary under the Will was in fact the counsel who represented the original

decree holder upto the first appellate Court, as also in the execution proceedings, this act in itself was sufficient to demonstrate that the Will was suspicious in nature.

7. He further submitted that the petitioners had enough material to show that the aforesaid Will could not be said to have been signed by the original decree holder and that therefore, the executing Court had erred in allowing the application at Exh.53. It was submitted that in the alternative, the respondent Nos.3 to 5 in this petition ought to be directed to be made parties in the Executing Court before the application filed by the said Dnyaneshwar Mahadeo Kosarkar is considered on merits. According to the learned counsel for the petitioners, the Executing Court ought to go into the question of validity of the said Will.

8. The aforesaid contentions raised on behalf of the petitioners are opposed by Mr. Mehta, learned counsel appearing for respondent No.1 and Mr.Tiwari, learned counsel appearing for respondent Nos.3 to 5.

9. This Court has perused the impugned order passed by the Executing Court. It is specifically

recorded that the legal heirs of the original decree holder were put to notice, yet, they chose not to participate in the proceedings before the Executing Court.

10. It is further recorded that the allegations regarding suspicious circumstances surrounding the Will are not supported by any material on record. In fact, it is found that the aforesaid assertion on behalf of the petitioners cannot be accepted.

11. Therefore, it is clear that after this Court set aside the earlier order and sent the matter back to Executing Court, the respondent Nos.3 to 5 i.e. sons and daughter of the original decree holder were put to notice and thereafter, the Executing Court passed the impugned order. There is detailed discussion as regards the allegations of suspicious circumstances made on behalf of the petitioners i.e. judgment debtors. The findings recorded by the Executing Court do not deserve any interference on that aspect also.

12. This Court had directed the petitioners to add respondent Nos.3 to 5 i.e. sons and daughter of the original decree holder as parties by way of an amendment to satisfy itself as regards their stand in

respect of the aforesaid Will. It is found that the said respondents have appeared before this Court and filed an affidavit stating that they have absolutely no doubt about the legality and validity of the Will and that the writ petition deserves to be dismissed.

13. In this backdrop, it is found that the only ground available to the petitioners, as per their contentions before the Executing Court for claiming that the Will was surrounded by suspicious circumstances, is the fact that the beneficiary under the Will happens to be the counsel who was representing the original decree holder in the proceedings before the first appellate Court as well as the Executing Court. In the absence of any other material to support the contentions raised on behalf of the petitioners that the Will could be said to be suspicious, only the aforesaid fact is not sufficient to hold that the impugned order deserves interference or that the application Exh.53 filed by Dnyaneshwar Mahadeo Kosarkar could be dismissed.

14. The petitioners as judgment debtors against whom the decree has attained finality are obliged to satisfy the decree. It appears that the aforesaid contentions are being raised on their behalf,

only with a view to delay the proceedings in the Executing Court.

15. In view of the above, it is found that there is no substance in this petition and accordingly it is dismissed. No order as to costs.

JUDGE