

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

Writ Petition No.3864 of 2021

Chandrakalabai w/o Dattraoji Patangrao (Chandrakalabai d/o Reshmaji Gaikwad)

vs.

Bhaurao Appaji Bodakhe & others

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

Court's or Judge's Orders

*Mr. P.D. Sharma, Advocate for the Petitioner.
 Mr. J.B. Kasat, Advocate for Respondent No.1.*

CORAM : MANISH PITALE, J.
DATE : 31st MARCH, 2022.

By this writ petition, the petitioner has challenged order dated 05/12/2019, passed by the Court of 7th Joint Civil Judge Junior Division, Pusad (hereinafter referred to as a 'trial Court'), whereby a review application filed by the original-plaintiff, i.e. respondent No.1 herein, was allowed and earlier order allowing an application under Order I Rule 10 of the Code of Civil Procedure (CPC) in favour of the petitioner, was set aside. The petitioner has also challenged judgment and decree dated 27/01/2020 passed by the trial Court in R.C.S. No.89/2007.

02] In the present case, a suit for partition and separate possession was filed by respondent No.1, bearing R.C.S. No.89/2007. During pendency of the suit, the petitioner filed an application under Order I Rule 10 of the CPC. This application in the first instance was allowed by an order dated 07/02/2015. Subsequently, a review application was filed by the respondent No.1, claiming that forged and fabricated documents were placed before the Court on behalf of the petitioner when the application under Order I

Rule 10 of the CPC was allowed in her favour.

03] The trial Court took into consideration the material on record and found that the documents, upon which the petitioner had placed reliance, could not be sustained. It was found that a criminal proceeding in the form of FIR No.143 was registered on 22/08/2015 against the petitioner, Headmaster of the concerned school and other persons for creating false record. After taking into consideration such material, the trial Court passed the impugned order on 05/12/2019, allowing the review application and setting aside the earlier order dated 07/02/2015, whereby the application of the petitioner under Order I Rule 10 of the CPC was allowed.

04] This order was not immediately challenged by the petitioner and with passage of time, on 27/01/2020, the suit came to be decreed. The respondent No.1 claims that as on today, certain properties have already come in his possession in terms of the decree.

05] Mr. Sharma, learned Counsel appearing for the petitioner submitted that by the present petition, the petitioner was entitled to challenge the order dated 05/12/2019, as well as the judgment and decree passed by the trial Court in the aforesaid suit.

06] Mr. Kasat, learned Counsel appearing for respondent No.1 submitted that the judgment and decree passed by the trial Court could not be directly challenged by filing writ petition. Even, as regards the order dated 05/12/2019, allowing the review application of respondent

No.1, Mr. Kasat submits that the said order was based on material brought on record before the trial Court and that there was no reason to interfere with the same.

07] In the first place, this Court is surprised that the petitioner has directly challenged the judgment and decree of the trial Court in the present writ petition. Such a remedy is unknown to law. The petitioner chose not to challenge the order dated 05/12/2019, within a reasonable period of time and in the meanwhile on 27/01/2020, the trial Court passed decree in the suit.

08] In this situation, this Court is not inclined to entertain the present writ petition for the nature of prayers made on behalf of the petitioner. The judgment and decree dated 27/01/2020 passed in R.C.S. No.89/2007, can be challenged only by way of remedy known to law and not by filing the present writ petition. The petitioner would also have the opportunity to raise her grievance in execution proceedings initiated in pursuance of the decree passed by the trial Court. Even otherwise, the impugned order dated 05/12/2019, could be made subject matter of challenge or a grievance in that regard can be raised, if at all the petitioner chooses to challenge the judgment and decree dated 27/01/2020, in terms of the procedure known to law.

09] In view of the above, the writ petition is dismissed with the observations made hereinabove. Needless to say, the interim order granted by this Court on 04/10/2021 stands vacated.

Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 01.04.2022 13:10

JUDGE