



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1093 OF 2025**

Khurshedbanu Abdul Samad Shaikh	...	Petitioner
versus		
Uma Krishnan and Anr.	...	Respondents

Mr. P.B.Shah with Ms. Gunjan Shah, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 29 JANUARY 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The Petitioner, who is an obstructionist in an execution proceedings, being Special Darkhast No.76 of 2007, assails the order dated 9 January 2025 passed by the learned Civil Judge, Sr. Division, Vasai, below the application (Exh. 89) to bring the legal representatives of the deceased decree holder on record.
3. By the said order, the executing Court has permitted the Respondent No.1 who claims to be the sister of, and a legatee under the Will executed by, the deceased decree holder, who passed away on 19 July 2024 to bring herself on record and prosecute the execution proceedings.
4. Mr. Shah, learned Counsel for the Petitioner, submitted that the executing Court has not considered the objections raised by the obstructionist to the application to bring the legal representatives on record. A serious

challenge to the status of the Respondent No.1 as the legal representative of the deceased decree holder was raised. The Will propounded by the Respondent is, ex-facie, forged and fabricated. In that view of the matter, the learned Civil Judge ought to have tried the question as to whether the Respondent is the legal representative of the deceased as warranted by the provisions contained in Order XXII Rule 5 of the Code of Civil Procedure, 1908.

5. I have perused the impugned order. This Court does not find any jurisdictional error, defect in procedure or material illegality in the impugned order. First and foremost, the fact that the Petitioner is the obstructionist, cannot be lost sight of. Secondly, under Section 2(11) of the Code, a legal representative means a person who in law represents the estate of the deceased person and includes any person who intermeddles with the estate of the deceased. A legatee under the Will satisfies the qualification of a legal representative. Thirdly, the trial Court was within its right in recording that the question of genuineness of the Will cannot be examined at the threshold and the Court will consider the objection to the genuineness of the Will when evidence is adduced in the obstruction proceedings. Lastly, the Respondent No.1 also claims to be the sister of the deceased decree holder. The submission of Mr. Shah that there is no material to show that the Respondent is the sister of the deceased decree holder, cannot be delved into, at this

stage.

6. I am, therefore, not inclined to entertain the Petition.

7. Hence, the following order :

ORDER

(i) The Writ Petition stands dismissed.

(ii) No costs.

(N.J.JAMADAR, J.)