

MHST020000032022

REGULAR DARKHAST NO.03 OF 2022

Shriang Shinde & ord.

V/s.

Sadashiv Shinde & ors.

ORDER BELOW EXH.1

The decree holders/original defendants have filed this application for execution of decree passed in R.C.S. No.57 of 1992 dtd.04.11.1999.

02. The suit was for partition and separate possession of Hindu Undivided Family properties. The suit was decreed by judgment dtd.04.11.1999. Being aggrieved by the judgment and decree passed in R.C.S. No.57/1992, the original defendants preferred Regular Civil Appeal No.97/2000. Said appeal came to be dismissed on 09.11.2006. The decree passed by the Civil Judge Junior Division, Satara in R.C.S. No.57/1992 has been confirmed.

03. The original plaintiffs filed execution petition No.86/2000 on 21.03.2000. My Learned Predecessor pleased to send precept to the Collector, Satara, under Section 54 of the Code of Civil Procedure. The execution petition was disposed of on 14.12.2010 in view of judgment of Hon'ble Bombay High Court in case of **Annasaheb Rajaram Nagane & Anr. Vs. Rajaram Maruti Nagane & Anr.** reported in **2001(Suppl.2) Bom.C.R.872.**

04. It appears that the D.H/defendants deposited court fee stamp of their shares which comes to Rs.356/- in said Execution Petition No.86/2000. They also prayed to allot their separate share as per decree. Record also shows that the original plaintiffs got separate

possession of their shares as per the decree. Accordingly, mutation entry No.6755 and 6655 came to be sanctioned.

05. The original plaintiffs/J.D.s. appeared in response to notices and some of them opposed the execution petition by filing their say below Exh.16. They admitted having received possession of their 1/4th share as per decree and also depositing court fee stamp by the present D.H. However, they contended that D.H. have not claimed partition of their shares in original suit. The shares of D.H. have not been declared. The execution is not within limitation. They also contended that 1/4th share of D.H. is yet to be partitioned. They prayed to dismiss the application.

06. Perused record. Following points arise my consideration and I have given my findings on those points with reasons as follows:

Sr. No.	Points	Findings
1.	Whether execution petition is within limitation ?	Yes.
2.	Whether the precept needs to be sent to the Collector, Satara vide Section 54 of C.P.C. ?	Yes.
3.	What order ?	As per final order.

REASONS

As to point No.1:

07. Indisputably, the R.C.S. No.57 of 1992 was instituted by present J.Ds. for partition and separate possession of Hindu Undivided Family properties. The suit was decreed on 04.11.1999. Being aggrieved by the judgment and decree passed in the said suit,

the original defendants preferred Regular Civil Appeal No.97/2000. Said appeal came to be dismissed on 09.11.2006. The decree passed by the Civil Judge Junior Division, Satara in R.C.S. No.57/1992 has been confirmed. Thus, the said decree attained finality.

08. The subject matter of the R.C.S. No. 57 of 1992 is agricultural lands assessed to land revenue to the Government. Once the Civil Court passes the decree for partition and separate possession of agricultural land assessed to land revenue, it becomes functus officio. All the further proceeding are to be carried out by the Collector or his appointed sub-ordinate gazetted official.

09. The ld. advocate for J.D. would submit that the original decree is dtd.04.11.1999. The present application has been filed in the year 2022. The present J.D. have already got their shares as per the decree. The application filed after about 23 years of passing the decree is barred by limitation. She would also submit that as per Article 136 of Limitation Act, a period 12 years is provided for execution of decree other than a decree for mandatory injunction. She further submit that, the application being barred by limitation be dismissed.

10. Ld. advocate for D.H. placed reliance on decision of the Hon'ble Bombay High Court in case of **Ramrathibai Sivnath Pardeshi Vs. Surajpal Bhulai Chaudhary** reported in **AIR (Bom) 1995 0 445**. In said matter, the decree for partition and separate possession of agricultural land was passed on 09.01.1947. The application under Section 54 of the CPC for sending the precept to the Collector was made on 15.02.1992. The said application was rejected being barred by limitation. The said order was challenged.

11. The Hon'ble High Court held that *"An application asking the court for issuance of the precept to the Collector is not an application for execution of the decree and only a request to the court to do ministerial act for sending the papers to the concerned Collector. Therefore, the period of limitation would not apply to such request. The order passed by the court below was set aside and precept was directed to be issued to the concerned Collector as per the decree."*

12. In the present case, the decree sought to be executed is passed on 04.11.1999. The said decree has been merged into the decree passed in R.C.A. No.97/2000, dtd.09.11.2006. The property sought to be partitioned is agricultural land assessed to land revenue. The present D.H. who were original defendants in the suit did not get share in the suit property. They are simply requesting the Court to send the precept to the Collector under Section 54 of CPC. The facts in the case before Hon'ble High Court and case in hand are identical. Therefore, ratio laid down in said matter is applicable to this case.

13. As per article 136 of the Limitation Act, a period of 12 years is provided for the execution of any decree other than a decree granting a mandatory injunction or order of any Civil Court. The time begins to run where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place.

14. As already held by the Hon'ble Bombay High Court in above said case, the application requesting to send papers under

Section 54 of CPC is not an application for execution of decree. This is a simple request to send papers to the Collector to partition the suit property. Therefore, in view of binding precedent in case of Ramrathibai Pardeshi (supra), the application is not barred by the limitation. In fact, this application would not come under Article 136 of the Limitation Act. Hence, I answered Point No.1 in the affirmative.

As to Point No.2:

15. The suit properties were already held to be joint family properties of D.H. and J.D. The theory of previous partition as allegedly held in the year 1935 between the ancestors was negated. The plaintiffs in R.C.S. No.57/1992 were held to be entitled to get one half share jointly in the suit properties. The said decree was confirmed in RCA No.97/2000. Admittedly, the shares of original defendants were not declared neither in the decree passed by the trial court nor by the appellate court.

16. As per Order XX Rule 18 of CPC, where the court passes a decree for partition of property or for the separate possession of share therein, then the decree shall declare the rights of the several parties interest in the property. In the present matter, the rights of defendants have not been declared while passing the decree. However, on perusal of plaint in R.C.S. No.57/1992, it appears that the original plaintiffs come with the case that plaintiff No.1 and defendant No.1 were having $\frac{1}{4}$ share each and plaintiff Nos. 2 to 4 were jointly having $\frac{1}{4}$ share in the suit property. The said theory was accepted by the court while passing the decree.

17. Record also shows that the original plaintiffs have got their separate shares as per decree passed in 57/1992 and Execution Petition No.86/2000. Their names were also entered to separate shares as per Mutation Entry No.6755 and 6455. The present D.H. have also deposited Court Fee Stamp of their $\frac{1}{2}$ share in R.D. No.86/2000 vide Exh.40 of said proceeding(Exh.09 in this case). The shares of present D.H. have not been declared by the decree. However, the record clearly reveals that they are entitled to get remaining $\frac{1}{2}$ share in the suit property.

18. As per Section 47 of the CPC all questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit. The question of entitlement of share of the D.H. in the suit property is a question arising between the parties to the suit. Hence, the said question relating to execution and satisfaction of decree is required to be decided in this proceeding.

19. The objection present J.D. that the D.H. are not entitled to get share in the suit property as the same were not declared by the court is not legal and sustainable. D.H. are ready to deposit a Court Fee Stamp as per their shares in the suit property. If fact they have already deposited the said court fee stamp in previous execution petition. Therefore, their request to send the precept to the Collector is legal and acceptable one. The precept, therefore, needs to be sent to the Collector, Satara. Hence, I answered point No.2 in the affirmative and in answer to point No.3 I pass the following order.

ORDER

1. The precept be sent to the Collector, Satara as per Section 54 of the Code of Civil Procedure, 1908.
2. Further proceedings are hereby closed.

Satara.
Date : 03.08.2026.

(Vaibhav K. Jadhav)
4th Joint Civil Judge, Sr. Dn.,
Satara