

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8458 OF 2005

Jagannath Bhau Kolekar

.. Petitioner

vs.

Ramchandra Narayan Kolekar
(since deceased by his legal heirs)
and others.

.. Respondents

Mr. Siddesh Pilonkar h/f. Mr. Uday Warunjikar for the Petitioner.
Mr. Dilip Bodake for Respondent No.1B.
Mr. Amit Borkar for Respondent Nos.5 and 6.

CORAM : M. S. SONAK, J.

DATE : 18 April, 2015.

P.C. :-

1] This petition challenges the order dated 21 September 2005, made by the Civil Judge, Senior Division, Karad, dismissing the petitioner's Execution Petition, on the grounds that the same is barred by law of limitation.

2] Heard learned counsel for the parties. Perused the impugned order and the records.

3] The impugned order notes that the final decree for partition in the present case was made on 21 October 1947 and since the execution has been filed after a period of twelve years from the date of making of the same, the Execution Petition is barred by law of

limitation contained in Article 136 of the Schedule to the Limitation Act.

4] In the present case, there is no clarity as to whether the decree of which the execution was applied for, is a final decree or a preliminary decree. Clarity on this aspect, is essential, because depending upon the same, the issue of applicability of law of limitation shall have to be considered.

5] That apart, although the learned Civil Judge has made reference to the decision of this Court in case of ***Annasaheb R. Nagane vs. Rajaram Maruti Nagane - AIR 2001 Bombay 303***, does not appear to have been considered in the context of fact situation arisen in the case. In the said decision, this Court, has issued general directions in the matter of sending decrees for partition to the Collector, for the purposes of execution. It was necessary for the learned Civil Judge to have considered the said ruling in the context of precise fact situation, which arises in the present case.

6] In view of the aforesaid, without expressing any opinion on the merits of the contentions of either parties, it would be

appropriate if the impugned order dated 21 September 2005 is set aside and the matter is remanded to the learned Civil Judge, Senior Division, Karad, for fresh decision on the preliminary issue of limitation.

7] The parties to appear before the Executing Court on 25 June 2015 at 11.00 a.m alongwith an authenticated copy of this order.

8] Accordingly, Rule is made absolute to the aforesaid extent. There shall be, however, no order as to costs.

9] All parties to act upon an authenticated copy of this order.

10] The Registry is also directed to remit the records and proceedings to the Court of Civil Judge, Senior Division at Karad in Special Darkhast No.11 of 2001, as expeditiously as possible and in any case before 20 June 2015.

11] Accordingly, petition is disposed of.

(M. S. SONAK, J.)