

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**902 CRA NO. 227 OF 2014
WITH
CA/4424/2015
IN
CRA/227/2014**

DAULAT NAMDEV BADA KH

VERSUS

SHRIMATI NYAHABAI BADA KH & ORS.

.....

Mr. Sanket S.Kulkarni, Advocate for Appellant.

Mr. N.V.Gaware, Advocate for R – 4.

.....

CORAM : T.V.NALAWADE, J.

DATE : 7th JULY, 2016

ORAL ORDER :-

. The proceeding is filed to challenge the order made by the 2nd Jt. Civil Judge [Jr.Division], Shrirampur on Exh. 1 and on the application filed by the present applicant in R.D. No. 204/2012. Heard both sides.

2. The execution proceeding is filed by the present respondent for execution of the Judgment and decree given in favour of the applicant. Present applicant took objection that the application was not filed within 12 years and under

Article 36 of the Limitation Act, it is not tenable. The trial Court held that no final decree was made by the Collector, which needs to be made u/s 54 of the Code of Civil Procedure and so it can not be said that the proceeding is not within limitation.

3. Learned counsel for the Decree Holder placed reliance on the case reported as 2001 (Supp.2) Bom.C.R. - 872 [Annasaheb Rajaram Nagane & Anr. Vs. Rajaram Maruti Nagane & Ors.]. The relevant observations are at para No. 24, which reads as under.

“ The narration of facts extracted hereinabove unequivocally demonstrate that the decree in question was preliminary with respect to the lands assessable to revenue, all further proceedings were required to be taken before the Collector or any Gazetted Officer subordinate to him, to whom the powers were delegated by the Collector as per section 54 read with Order 20, Rule 18 of Civil Procedure Code. When matter goes before the Collector, he has to pass final decree by coming to the conclusion, how the land should be partitioned between the parties and then he has to execute the decree actually by putting the parties in possession of the respective portion allotted to them. The Civil Court has no say in the matter as to

how the land is to be partitioned between the parties, so as to say, for preparing final decree. So, it was obligatory on the part of the Civil Court to transfer papers to the Collector for effecting partition as per declaration made in the judgment. All further proceedings with respect of such decree are required to be taken up by and before the Collector. As a matter of fact, it was not necessary for the applicants/decreed holders to move or make any application to the Court to send the decree to the Collector. It was a duty of the Court to send necessary papers to the Collector as per the directions given in the decree itself. An application, even if made in the form of darkhast application with a prayer to send decree and papers to the Collector, was not an application in execution. It did not attract provisions of Limitation Act. At no point of time executable final decree took birth, so as to attract the provisions of Limitation Act. Therefore, the impugned order passed by the executing Court holding that the execution application was barred by limitation is bad and illegal and suffers from material illegality and irregularity, as such, the same is liable to be quashed and set aside. ”

4. Learned counsel for the respondent placed reliance on the case reported as 2014 (1) Mh.L.J. - 420 [Ramkrishna Narayan Khedkar Vs. Shrikrishna Nagorao Zade].

5. In view of the observations made by this Court, in cases cited supra this Court holds that there are no merits in the case. The Courts below have not committed any error in giving decisions.

6. Civil Revision Application stands dismissed. Interim relief, if any, granted earlier is vacated. C.A. No. 4424 of 2015 stands disposed of.

[T.V.NALAWADE, J.]