

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9530 OF 2013

1. Dhula s/o Limba Chitalkar,
died through legal heirs.
- 1A. Makabai Haribhau Kulal,
Age: Major, Occ. Household,
R/o Hazarwadi, Digras,
Tal. Sangamner, Dist. Ahmednagar.
2. Vithoba Jotiba Sul,
Age 49 years, Occ. Agri.,
R/o as above.
3. Vatsalabai Ambu Chitalkar,
Age Major. Occ. Major
4. Bhausahab Ambu Chitalkar,
Age Major. Occ. Major
5. Shivaji Ambul Chitalkar,
Age Major. Occ. Major
6. Khandu Ambu Chitalkar,
Age Major. Occ. Major

All R/o Sakur, Tal. Sangamner,
Dist. Ahmednagar.

7. Karbhari Ambu Chitalkar,
Age Major. Occ. Agri.,
8. Bhimabai Bhaga Chitalkar,
Age Major. Occ. Agri.,
9. Bapu Bhaga Chitalkar,
Age Major. Occ. Agri.,
10. Rakhma Bhaga Chitalkar,
Age Major. Occ. Agri.,
11. Yamunabai Bhaga Chitalkar,
Age Major. Occ. Agri.,
All R/o Sakur, Tal. Sangamner,

District Ahmednagar.

12. Bababai Satu Khemnar,
Age Major, Occ. Major
13. Banubai Pangar Pingale,
Age Major, Occ. Major
14. Radhu Dhula Chitalkar,
Age 57 years, Occ. Agri.,
15. Paraji Rambhau Chitalkar,
Age 55 years, Occ. Agri.,
16. Bhaga Rambhau Chitalkar,
Age 49 years, Occ. Agri.,
17. Dhondibhau Rambhayu Chitalkar,
Age 47 years, Occ. Agri.,
R/o Sakur, Tal. Sangamner,
District Ahmednagar.
18. Tukaram Rambhau Chitalkar,
Age 57 years, Occ. Major,
19. Dadu @ Kondiram Rambhau Chitalkar,
Age Major, Occ. Major,
20. Saibai Mhatu Sonnar,
Age Major, Occ. Major,
21. Tarabai Manohar Shelke,
Age Major, Occ. Major,

Both r/o as above

... Petitioners

Vs.

1. Mahadu Dhula Chitalkar,
Age 77 years, Occ. Agri.,
R/o Sakur, Tal. Sangamner,
District Ahmednagar.
2. Balu s/o Dhula Chitalkar,
Age 52 years, Occ. Agri.,
R/o Sakur, Tal. Sangamner,
District Ahmednagar.

(Note: Petition stands dismissed
against Respondent no.1 as
per courts order dated 1-02-2014.)

... Respondents

Mr. Katneshwarkar P.R., Advocate for the petitioner.
Mr. A.N. Nagargoje, Advocate for respondent no.2.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 08-08-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.
2. Learned counsel Mr. Katneshwarkar P.R., appearing for the petitioner vehemently contends that, the impugned order can not be maintained primarily for the reason that, decree of partition and separate possession had been passed on 09-08-1996 whereas the applications exhibits-72 and 78 for sending precept to collector pursuant to section 54 of Civil Procedure Code have been filed far beyond the prescribed period of limitation in 2011.
3. The matter would be covered under article 136 of the Indian Limitation Act, 1963 wherein any such application could be filed within a period of 12 years from the date of decree. The trial court, although, has purportedly considered the citations on behalf of the petitioner, yet the spirit underlying the same has been missed out.

4. On the other hand, learned counsel Mr. Nagargoje persuasively contends that, the submissions have no wind in their sails. He submits that, as on the date the decree which has been sent for execution is only a preliminary decree. It cannot be said that, the period of limitation has started running for applications under article 136 of the Indian Limitation Act, 1963 and for that matter filing execution proceedings. He submits that, even otherwise, it cannot be considered that applications are beyond the period of limitation for the appeal against the decree of 1996 has been disposed of only on 07-03-2000. In such a case, the decree which had been passed stands merged into order dated 07-03-2000, and looking at the date of applications exhibits-72 and 78 on which those were filed, they are within the period of limitation.

5. He submits that, accordingly the matter has been considered, the impugned order can not be flawed on any count factual or legal. He further submits that, the order of precept is an administrative order and, as such, it would not be covered by limitation act and after hearing counsel for the parties and perusal of impugned order learned judge has considered that, as yet it can not be said that any final decree has been passed and further that after the precept, after the orders passed by the collector, final decree could be passed.

6. Learned judge has also further considered that precept is an administrative action and as such it does not appear that the matter can be said to be filed under article 136 of the Indian Limitation Act, 1963.

7. Learned counsel for the petitioner is not able to show that it can be said that the execution petition had been filed after the prescribed period of twelve years from the date of order in appeal. The executing court appears to have considered this as well as other aspects and passed the order.

8. In the circumstances, it does not appear to be a case wherein the order would be flawed, and that the impugned orders are legally and factually unsustainable. In view of aforesaid, the writ petition is not being entertained and is dismissed. Rule discharged. Interim relief stands vacated.

(SUNIL P. DESHMUKH)
JUDGE