

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4247 OF 2017

Smt.Laxmibai Bapu Patil & anr. ... Petitioners

Vs.

Smt.Sunita Ashok Patil & Ors ... Respondents

Mr.A.P. Shinde for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 14, 2017**

P.C. :

1. Not on Board. Upon urgent mentioning, taken on Production Board.
2. This Writ Petition is directed against the order dated 4.11.2015 passed by the learned Joint Civil Judge Junior Division, Ichalkaranji, in Regular Darkhast No.1 of 2015 pursuant to the decree dated 8.9.1997 in R.C.S. No.326 of 1996. Appeal was not preferred against the decree and, therefore, the application prayed for simple precept to the Collector. In the order, the trial Court has considered the issue of limitation and rightly referred to and relied on the judgment in the case of **Annasaheb Nagane vs. Rajaram**

Nagane¹ and observed that sending precept under section 54 of the Civil Procedure Code is not to be treated as an application in execution as it is a preliminary decree.

3. The contentions of the petitioner is that he was earlier given notice and he appeared in the matter but suddenly the application was taken out for sending precept and he was not heard, does not have much substance as the precept is sent under section 54 of the Civil Procedure Code.

4. In view of the above, the Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)

¹ 2001 (3) Mh L J 53