

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10032 of 2010

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1. Shyamlal Paswan
 2. Ramlal Paswan
 3. Bhole Ram
 4. Krishna Ram All sons of late Mahadeo Dusadh All are resident of Villatge- Khambha, P.O. Sonaura, P.S. Mali, District- Aurangabad.
 5. Surajmal Dusadh
 6. Bijendra Dusadh
 7. Dhirendra Dusadh
 8. Nagendra Dusadh All no. 5 to 8 Sons of late Bakhora Dusadh
 9. Chandrakanti Kuer W/o late Bakhora Dusadh Sl No. 5 to 9 substituted legal heirs of Original Plaintiff No. 6 and 7. All resident of Village- Khambha, P.S. Mali, District- Aurangabad.

.... Petitioner/s

Versus

1. Tetri Devi W/o late Bigan Dusadh All are resident of Village- Khambha, P.O. Sonaura, P.S. Mali, District- Aurangabad.
2. Pramod Dusadh
3. Manoj Dusadh
4. Guddu Dusadh
5. Binod Dusadh all 2 to 5 sons of Bigan Dusadh
6. Most. Shayampati Devi Wife of late Jugal Dusadh
7. Pradhuman Dusadh Son of late Jugal Dusadh All are residents of Village- Khambha, P.S. Mali, District- Aurangabad.
8. Naresh Dusadh S/O Late Sasti Dusadh Substituted Legal Heirs Of Defendants No. 1 And 2, R/O Vill.- Khambha, P.S. Mali, Distt.- Aurangabad
9. Awadhesh Dusadh S/O Late Sasti Dusadh Substituted Legal Heirs Of Defendants No. 1 And 2, R/O Vill.- Khambha, P.S. Mali, Distt.- Aurangabad
10. Pravesh Dusadh Sl No. 1 to 10 substituted legal heirs defendants no. 1. and 2. All resident of Village- Khambha , P.S. Mali , District - Aurangabad.
11. Janki Sahu S/O Late Haricharan Sahu Substituted Heirs Of Akhaj Sahu Plaintiff No.1, R/O Vill.- Khambha, P.S.- Mali, Distt.- Aurangabad
12. Ramchandra Sahu S/O Late Tribeni Sahu Substituted Heirs Of Akhaj Sahu Plaintiff No.1, R/O Vill.- Khambha, P.S.- Mali, Distt.- Aurangabad
13. Gopal Sahu S/O Late Narayan Sahu Substituted Heirs Of Akhaj Sahu Plaintiff No.1, R/O Vill.- Khambha, P.S.- Mali, Distt.- Aurangabad
14. Binod Sahu S/O Late Narayan Sahu Substituted Heirs Of Akhaj Sahu Plaintiff No.1, R/O Vill.- Khambha, P.S.- Mali, Distt.- Aurangabad
15. Baijnath Sahu S/O Late Hazari Sahu Substituted Heirs Of Akhaj Sahu Plaintiff No.1, R/O Vill.- Khambha, P.S.- Mali, Distt.- Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. BIRENDRA KUMAR SINGH 1
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 24-08-2018

This application has been filed by the decree holder of Title Suit No.103 of 1952/40 of 1953 for quashing the order dated 13.05.2010 whereby and whereunder the learned court below refused to pass final decree on the prayer of the petitioners decree holder.

2. Heard learned counsel for the petitioners. A supplementary affidavit has been filed today on behalf of the petitioners which is kept on record.

3. It appears that the ancestor of the petitioners filed the aforesaid suit for declaration of title which was decreed on 20.01.1954 and accordingly a preliminary decree was prepared on 02.02.1954. The defendants of said suit filed Title Appeal No.77 of 1954 before the District Judge which was dismissed on 15.07.1954. Thereafter, the decree holder filed a petition for carving out their share on 05.05.1954. The pleader commissioner submitted its report on 23.04.1957 which was confirmed on 05.01.1958. The learned court below directed the petitioners to deposit the fees of the commissioner which was not deposited till 21.05.1958. The learned court below gave direction to the parties to file requisites for preparation of final decree but on account of laches on the part of Pairvikar, the requisites could not been filed. In due course, the original plaintiff died and his



heirs who are petitioners before this Court came to know about the decree in their favour and accordingly they filed a petition on 10.01.2008. The learned court below called for record from the record room for preparation of final decree but after perusing the preliminary decree and considering the delay and lapse of 52 years refused to accept the stamp for preparation of final decree.

4. The contention of learned counsel for the petitioners is that there is no prescribed period of limitation for preparation of final decree. In this regard, learned counsel relied on ruling reported in **AIR 2007 SC page 1077 Hasham Abbas Sayyad v. Usman Abbas Sayyad and Ors.** The learned Apex Court at para-9 of said ruling has observed that “A final decree proceeding may be initiated at any point of time. No limitation is provided therefor. However, what can be executed is a final decree, and not a preliminary decree, unless and until final decree is a part of the preliminary decree.”

5. In the case in hand, I find that survey knowing pleader commissioner submitted its report on 23.11.1957 and the court below confirmed the said report on 04.01.1958 as no objection was filed. The court below disposed of the suit on 08.09.1958 with a direction to draw final decree on filing the necessary stamp and deposit of balance of commissioner's fee.

6. In view of above discussions and proposition of law, the



impugned order passed by the court below is set aside and the matter is remitted to the court below to consider the matter afresh as regards preparation of final decree.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.08.2018
Transmission Date	N/A

