

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

8 WRIT PETITION NO. 321 OF 2017

HARI DEOCHAND SAPKALE
VERSUS
TUKARAM DEOCHAND SAPKALE

...
Advocate for Petitioner : Mr. L.V.Sangeet h/f Mrs. M.L.
Sangeet
Advocate for respondent : Mr. T.R. Daware h/f Mr. A.G.
Talhar
...

CORAM : S.V.GANGAPURWALA, J.

DATE : AUGUST 14, 2018

O R D E R :

Mr. Sangeet, learned counsel for the petitioner submits that the Court has committed an error while passing impugned order. The decree had not become final, and the court could not have referred it to the Collector under Section 54 of the Code of Civil Procedure for effecting partition.

2. According to the learned counsel, it is only a final decree which is executable and the preliminary decree is not executable.

3. The learned counsel relied on the decision of the learned Single Judge of this court in the case of **Annasaheb Rajaram Nagane and another Vs Rajaram Maruti Nagane and others** reported in **2001 (3) Mh. L.J. 53.**

4. It is not disputed that the decree in question is preliminary decree pertaining to the agricultural land. In that event, Section 54 of the Code of Civil Procedure shall come into operation and the decree has to be sent to Revenue Authority for its execution. In the case of **Annasaheb Rajaram Nagane** (supra), the learned Single Judge has observed that :

“ The narration of facts extracted herein above 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 the 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 to 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. "

5. The above observations decisively decide as to how the decree for partition of agricultural land has to be executed. The learned trial Court while passing the impugned order has followed the said course. In the light of above, no case is made out for interference by this Court.

6. The Writ Petition is dismissed. No costs.

7. Mr. Sangeet, learned counsel submits that the Second Appeal filed by the petitioner bearing No.393 of 2012 against the judgment and decree passed by the lower appellate Court, pursuant to which the present execution has been filed is admitted and the

decree is stayed by this Court.

8. I am only considering the present Writ Petition to the extent of the impugned order. Naturally the stay granted by the second appellate court would govern the field.

[S.V.GANGAPURWALA, J.]

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