

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

**WRIT PETITION NO.12438 OF 2022**

**AMBIKABAI DAGDU DHARNE DIED THROUGH LRS RAMRAJE  
DAGDU DHARNE AND OTHERS  
VERSUS  
BALASAHEB MALLAPPA NAKSHE**

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Advocate for Petitioners : Mr. N.P. Patil Jamalpurkar  
Advocate for the Respondent : Mr. A.N. Sabnis h/f. Mr. E.S. Murge

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**CORAM : SHARMILA U. DESHMUKH, J.  
DATE : 17-01-2023**

**PER COURT :**

. Heard.

2. The judgment and decree dated 20.09.1982 passed by the IInd Jt. Civil Judge, Junior Division, Latur in Civil Suit No.134 of 1976 is sought to be executed by the respondent, which is being objected by the present petitioner on the ground of limitation.

3. By the judgment and decree dated 20.09.1982 in a partition suit the shares of the petitioners and the respondents were determined and the decree was directed to be sent to the Collector under Section 54 of the Code of Civil Procedure.

4. The learned counsel appearing for the petitioners submits that after a period of 40 years the decree is sought to be put into execution. He further submits that by the judgment and decree

the trial Court had directed the decree to be sent to the Collector and hence at this stage a further application for sending the decree to the Collector under Section 54 is not warranted. In support of his submission that execution proceedings are barred by limitation, he relies upon the decision of the Apex Court in the case of **Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna & Ors., Special Leave Petition (C) No.17932 of 2009 decided on 21.08.2009.**

5. I am afraid that the decision of **Shub Karan Bubna** (*supra*) which has been cited by the petitioner supports the case of the respondent. In the decision of **Shub Karan Bubna** (*supra*), the Apex Court has decided the issue relating to preliminary decree and a final decree in respect of the partition. The Apex Court has observed that initiation of final decree proceedings does not depend upon an application for final decree and the Code does not contemplate filing an application for final decree. It is further observed by the Apex Court that when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the Court. Performance of such function does not require a reminder or nudge from the litigant. The Apex Court has further held that in the facts of that case the application filed by the plaintiff for drawing up of a final decree, was not subject to any period of limitation.

6. Considering the limited submission made by the learned Counsel for the petitioners challenging the execution proceedings on the ground of limitation, the decision of the Apex Court is clear.

7. In view of the above, writ petition is devoid of merits and the same is dismissed.

( SHARMILA U. DESHMUKH, J. )

GGP