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

WRIT PETITION NO.11791 OF 2023

Shridhar Prakash Chavan & Ors.

... Petitioners

V/s.

Shrikant Govind Chavan & Ors.

... Respondents

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Mr. Balasaheb Deshmukh i/by Mr. Vilas Kolekar, for the
petitioners.

Mr. Dilip Shinde, for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 27, 2023

P.C.:

1. The challenge in this writ petition is to the order dated 29 October 2018 passed in Miscellaneous Application No.22 of 2015, issuing precepts under Section 54 of the Code of Civil Procedure, 1908 for partition of agricultural properties as per decree passed in Regular Civil Suit No.314 of 1989.

2. The petitioners had challenged the order on the ground that final decree in the facts of the case was passed on the ground that the decree cannot be executed after lapse of period of 12 years from the date of final decree.

3. According to petitioner, the consent terms were arrived on 29 March 1990. The execution petition was filed on 29 July 2015; hence, the application under Section 54 of the Code of Civil

Procedure, 1908 is barred by limitation.

4. Learned Advocate for the petitioner submitted that on 29 March 1990, the decree became enforceable and, therefore, application under Section 54 of the Code of Civil Procedure, 1908 was required to be filed within 12 years from 29 March 1990.

5. In support of his submission, he relied on judgment in the case of **Bimal Kumar & Another versus Shakuntala Debi & Others** reported in [2012] 1 SCR 195.

6. I have considered the submission made on behalf of the petitioners. In my opinion, the issue raised by the petitioners is squarely covered by the judgment of this Court in the case of **Ramrathibai Shivnath Pardeshi vs Surajpal Bhulai Chaudhari and Ors**, reported in 1996 2 MhLJ 40.

7. This Court was considering the case where a preliminary decree was passed on 09 January 1947. Undoubtedly decree was in relation to agricultural lands. This Court after considering Section 48 of the Code of Civil Procedure, 1908 as it stood prior to 1 January 1964 and Section 54 of the Code of Civil Procedure, 1908 read with Order 20, Rule 18 and Article 182 of the Limitation Act, 1963 held that in relation to agricultural lands, a request needs to be made to the Court to send papers (documents) to concern Collector for effective partition of agricultural lands. Such an application which is required to be made by the applicant for issuance of precepts to the Collector, cannot be said to be an application for execution of the decree. Such an application is only a request to the Court to do ministerial act and is neither

governed by Section 48 of the Code of Civil Procedure, 1908 as it stood prior to 1 January 1964 nor governed by Article 182 of the Limitation Act, 1963.

8. This Court considered full bench judgment of this Court in the case of **Ramabai Govind versus Anant Daji** reported in AIR 1945 Bom 338 wherein full bench of this Court held that the act of sending papers to the Collector under Section 54 is a ministerial act not governed by either Article 181 or 182 of the Limitation Act, 1963.

9. The Single Judge further considered full bench of Madras High Court in the case of **Sree Rajah Mantripragad Venkataraghava Rao Bahadur, Zamindar Gam and Ors. versus Sri Rajesh Mantripragad Venkata Hanumantha Rao Bahadur, Zamin-dar Gam (deceased) and Ors**, reported in AIR (1945) Madras 336, this Court held that though the decree was passed on 9 January 1947 and application under Section 54 was filed after 45 years of passing of decree, such an application for issuance of precepts to the Collector for partition of lands is neither barred by any period of limitation nor prohibited under any law. There being no law prohibiting the partition of property assessed to the payment of land revenue after a period of limitation, the applicant could not have been deprived of its rights in having partition decree dated 9 January 1947 effected through the Collector. In my opinion, the judgment in the said case squarely applies to the facts of the case.

10. In so far as judgment in the case of **Bimal Kumar** (Supra) relied by the petitioner is concerned, the properties in the said

judgment were house properties under the scheme of Code of the Civil Procedure, 1908, Section 54 applies only in relation to agricultural lands. However, for the purpose of executing partition decree of house properties, the decree holder needs to file execution petition under Order 21 of the Code of Civil Procedure, 1908. Such execution petition can be filed only after final decree is passed in relation to house properties; therefore, in relation to house properties, the decree becomes enforceable only after final decree.

11. Having considered judgment in the case of **Bimal Kumar** (Supra), in my opinion, no proposition of law which is inconsistent with law laid down by Single Judge of this Court in the case of **Ramrathibai** (Supra) has been laid down. Therefore, the judgment in the case of **Bimal Kumar** (Supra) is inapplicable in the facts of the case as the Apex Court was considering execution application for enforcement of decree in relation to house properties.

12. In my opinion, therefore, no fault can be found with the order of Civil Court sending precepts under Section 54 of the Code of Civil Procedure, 1908. Hence, the writ petition is dismissed.

(AMIT BORKAR, J.)