

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

[1] CIVIL REVISION APPLICATION NO. 285 OF 2022

Concord Co-operative Housing Society and others	Applicants
Versus	
Amedmal Bhatewada (deceased) Chandrakala Shantilal Lunawat and others	Respondents

.....
WITH

[2] WRIT PETITION NO. 6701 OF 2022

Irshad Ishaque Shaik	..Petitioner
Versus	
Amedmal Indrabhan Bhatewada (since deceased)Through LR and others	..Respondents

.....
WITH

[3] CIVIL REVISION APPLICATION NO. 406 OF 2022

Yashcon Urban Development LLP	..Applicant
Versus	
Amedmal Indrabhan Bhatewada (deceased) Through LR and others	..Respondents

.....
WITH

[4] WRIT PETITION (STAMP) NO. 13161 OF 2022

Venkatesh Landmark through its Partners	..Petitioner
Versus	
Amedmal Indrabhan Bhatevada (deceased) Through LRs and others	..Respondents

.....
WITH

**INTERIM APPLICATION NO.17880 OF 2022
IN
CIVIL REVISION APPLICATION NO. 285 OF 2022**

.....
WITH

**INTERIM APPLICATION NO.30238 OF 2022
IN
WRIT PETITION NO.6701 OF 2022**

**WITH
INTERIM APPLICATION NO.17863 OF 2022
IN
WRIT PETITION NO.6701 OF 2022**

**.....
WITH
INTERIM APPLICATION NO.30237 OF 2022
IN
WRIT PETITION [ST] NO.13161 OF 2022**

**WITH
INTERIM APPLICATION NO.17861 OF 2022
IN
WRIT PETITION [ST] NO.13161 OF 2022**

**.....
WITH
INTERIM APPLICATION NO.3302 OF 2023
IN
CIVIL REVISION APPLICATION NO.406 OF 2022**

Mr. G.S. Godbole, Senior Advocate i/b. Shivraj R. Patne, a/w. Shon Gadgil for the Applicants in CRA/285/2022, for Respondent Nos.6(A) to (G), for Respondent Nos.6(I) to (L) in CRA/406/2022, for Respondent Nos.6 to 17 in WP/6701/2022; and for Respondent No.8 in WP/ST/13161/2022.

Mr. S. M. Gorwadkar, Senior Advocate i/b. Umesh Mankapure for the Petitioner in WP/6701/2022.

Mr. Anil Anturkar, Senior Advocate a/w. Sugandh Deshmukh, Irvin D'Souza, Vaibhav Thorve, Harshvardhan Suryavanshi, for Petitioner in WP/ST/13161/2022.

Mr. R. D. Soni i/b. Karan Parmar for the Applicant in CRA/406/2022, for Respondent No.9 in WP/ST/13161/2022, for Respondent No.7 in CRA/285/2022 and for Respondent No.19 in WP/6701/2022.

Mr. Virag Tulzapurkar, Senior Advocate i/b. Hitanshu Jain for Respondent Nos.4.1 to 4.7 in WP/6701/2022, for Respondent

Nos.4(A) to 4(G) in WP/ST/13161/2022, and for Respondent Nos.4(a) to 4(g) in CRA/285/2022.

Mr. Surel Shah, Advocate i/b. Chaitanya Nikte for Respondent Nos.1 & 5.1 to 5.6 in WP/6701/2022, for Respondent Nos.1(A), 5(A) to 5(F) in WP/ST/13161/2022, and for Respondent No.1 in CRA/285/2022.

Mr. Mayur Khandeparkar, Advocate i/b. Sumedh Ruikar for Respondent Nos.2.1 to 2.8 & 3.1 in WP/6701/2022, for Respondent Nos.2(A) to 2(H) & 3(A) in WP/ST/13161/2022 and for Respondent Nos.2(a) to 2(h) and for Respondent No.3(a) in CRA/285/2022.

CORAM : SARANG V. KOTWAL, J.

RESERVED ON : 18th APRIL, 2023
PRONOUNCED ON: 25th APRIL, 2023

JUDGMENT:

1. All these matters are decided by this common judgment because all the parties agree that all these matters involve common questions of law and are based on the common history regarding the facts and the disputed facts. In all these matters, notices were issued for final disposal. All the parties were duly served with such notices and learned Counsel appearing before me agree that the matters can be decided finally at this stage.

2. I have heard Shri G.S. Godbole, learned Senior Counsel for the Applicants in CRA No.285/2022, Shri S. M. Gorwadkar, learned Senior Counsel for the Petitioner in WP No.6701/2022, Shri Anil Anturkar, learned Senior Counsel for the Petitioner in WP(St) No.13161/2022, Shri R. D. Soni, learned counsel for the Applicant in CRA No.406/2022, Shri Virag Tulzapurkar, learned Senior Counsel, Shri Surel Shah, and Shri Mayur Khandeparkar, learned counsel , for the respective contesting Respondents.
3. C.R.A. No.285/2022 is preferred by Concord Co-operative Housing Society and its Chairman & Treasurer. The society claims to be the owner of the property.
4. Writ Petition (Stamp) No.13161/2022 is filed by Venkatesh Landmark, through its Partners, who are developing the property by making construction on the property.
5. C.R.A. No.406/2022 is filed by Yashcon Urban Development LLP, through its Partner. The Applicant claims to be owner of a part of the subject properties.
6. Writ Petition No.6701/2022 is filed by one of the members of the Concord Co-operative Housing Society.

7. The contesting Respondents, in all these matters, claim to be the legal heirs of one Amedmal Indrabhan Bhatewada. In all these matters, the Applicants/Petitioners have challenged the order dated 27.4.2022 passed by the 10th Jt. Civil Judge, Senior Division, Pune in Civil Misc. Application No.1658/2021. In C.R.A. No.285/2022, further prayers are made for permission to file certain documents which were not available at the time of passing of the impugned order in the Court of 10th Jt. Civil Judge, Senior Division, Pune.

Subject properties :

8. The dispute is about the following properties :

- a] Land bearing Survey No.214, Hissa No.1/1 admeasuring 00 Hectare 97 Ares + pot kharaba 0 Hectare 02 Ares, assessed Rs.0.94, situated at village Lohegaon, Taluka–Haveli, District–Pune.
- b] Land bearing Survey No.214, Hissa No.1/4 admeasuring 1 Hectare 15 Ares, assessed Rs.1.06/-, situated at village Lohegaon, Taluka–Haveli, District–Pune.

(Both these properties together are hereinafter referred to as ‘the subject properties’).

9. **Brief history and facts:**

- i. The subject properties were originally owned by one Bapu Kashiba Devkar. He died on 27.3.1939. After that, those subject properties were held by his heirs Shankar Bapu Devkar and Kisan Bapu Devkar. Their names were entered by Mutation Entry No.1942.
- ii. Amedmal filed Small Causes Suit No.4658/1935 against Shankar Bapu Devkar for recovery of money. The suit was decreed.
- iii. Darkhast No.560/1937 was filed by Amedmal for executing the decree in Suit No.4658/1935, in which half undivided share of Shankar was attached and was put up for sale in execution.
- iv. On 19.12.1939, Amedmal Bhatewada purchased Shankar's share in the subject properties in the Court auction. His name was added in the Other Rights column in the record of rights by Mutation Entry No.2027, but, it was without possession.

- v. On 20.1.1940, the sale was confirmed by the Executing Court and the Sale Certificate No.65/1940 was granted to the decree holder Amedmal.
- vi. On 1.9.1940, Mutation Entry No.2027 was made on the basis of the sale certificate and Amedmal's name was recorded in Other Rights column.
- vii. In 1944, Amedmal Bhatewada filed a suit for partition bearing Civil Suit No.955/1944 against Shankarao Devkar and Kisan Devkar (hereinafter referred to as 'the said suit').
- viii. The suit was decreed vide the judgment and order dated 27.10.1945 (hereinafter referred to as 'the said decree'). By the said decree, Amedmal Bhatewada was declared to be the owner of the half share of the subject properties.
- ix. It is mentioned in the memo of the C.R.A. No.285/2022 that Amedmal Bhatewada filed Execution Application No.292/1946 for execution of the said decree dated 27.10.1945. It is mentioned in the memo that it appears that the said execution was disposed of on 2.7.1946 for non-filing of the extract.

- x. In 1947, Amedmal Bhatewada filed another Execution Application bearing No.1150/1947 for recovery of money and for demanding actual physical partition and separate possession by metes and bounds by sending the precept to the Collector or his subordinate officer under the provisions of the Code of Civil Procedure, 1908 (for short, 'C.P.C.').

Till this point, the facts are more or less undisputed. However, subsequent to that, the parties are at variance in respect of some important facts.

- xi. According to the Applicants and the Petitioners, on 11.1.1948, a compromise was arrived at between Amedmal Bhatewada and the Devkars; and Rs.200/- were paid as full and final relinquishment of all his claims to Amedmal Bhatewada by the Devkars in complete satisfaction of the decree or claims under the decree. A receipt was also issued by Amedmal Bhatewada acknowledging the receipt of money from the Devkars.

The heirs of Amedmal Bhatewada are seriously disputing this fact of compromise.

- xii. The memo of the C.R.A further mentions that on 19.2.1948, further payments were made by Devkars and were acknowledged by Amedmal Bhatewada in his letter-cum-receipt dated 19.2.1948. According to the Applicants, the letter records that all the claims were completely satisfied.
- xiii. On 15.7.1948, a purshis at Exhibit-8 was filed by the decree holder Amedmal Bhatewada in the Execution Application No.1150/1947 stating that he did not wish to pursue the said Execution Application any longer.

The contesting Respondents are disputing this fact as well.

- xiv. According to the Applicants/Petitioners, by the order dated 15.7.1948, the Execution Application No.1150/1947 was disposed of as per the said purshis at Exhibit-8.
- xv. On 25.2.1963, Amedmal Bhatewada passed away.
- xvi. There is no dispute that the subject properties were included within the Municipal limits of Pune Municipal Corporation vide Government Notification No.PMC/1160/2205/C dated 3.3.1962.

- xvii. Shankar Devkar, Kisan Devkar and Chandu Kisan Devkar sold an area admeasuring 2 Acres 18 Gunthas out of Survey No.214/1/1 and an area admeasuring 2 Acres 34 Gunthas out of Survey No.214/1/4 to Meherjibhai Kawasjibhai Paleya vide a sale deed dated 21.8.1967 bearing registration No.1606 of 1967.
- xviii. Meherjibhai Paleya sold some area from the subject properties to Jumana Zakiuddin Rangwala, Shirin Halala, Durriya Rangwalla, Fakhruddin Fida Ali Jinwalla and Fatema Jinwala by the sale deed dated 3.8.1973.
- xix. On 27.12.2006, Concord Co-operative Housing Society purchased some area from the subject properties from the aforementioned Jumana Rangwala, Fatema Jinwala and others by a registered sale deed bearing No.9272/2006. The name of the society was entered in the revenue record by Mutation Entry No.24916.
- xx. The Applicant Society then made an application challenging the Mutation Entry No.2027 by which the name of Amedmal Bhatewada was entered in the Other Rights column. On

3.7.2014, Sub-Divisional Officer, Haveli allowed the Applicant Society's application and ordered deletion of name of Amedmal Bhatewada from the record of rights. Pursuant to the said order, on 7.10.2014 Amedmal Bhatewada's name was deleted from the record of rights vide Mutation Entry No.41228. This Mutation Entry is challenged by the heirs of Amedmal Bhatewada in the separate proceedings.

- xxi. In the year 2018, Ameya Jain, Lavina Jain, and Prismi Jain purchased some piece of the land from the Applicant Society. They, in turn, sold that piece of land, which according to the contesting Respondents is 39.73 Ares, to M/s. Yashcon Urban Development LLP. C.R.A. No.406/2022 is filed by said Yashcon Urban Development LLP.
- xxii. After more than 76 years, the contesting Respondents i.e. Respondent Nos.1 to 5 in C.R.A. No.285/2022 preferred Civil Misc.Application No.1658/2021 under Section 54 of Code of Civil Procedure (for short, 'C.P.C.') before the learned Civil Judge, Senior Division, Pune for sending the

copy of the decree dated 27.10.1945 to the District Collector, Pune for compliance. This application was allowed by the impugned order dated 27.4.2022 passed by the 10th Jt. Civil Judge, Senior Division, Pune. This order is impugned in all these matters before this Court.

Submissions on behalf of the Applicants/Petitioners:

10. Shri Godbole, learned Senior Counsel argued for the Applicants in C.R.A. No.285/2022. Shri Godbole submitted that the Applicants, in Civil Misc. Application No.1658/2021 before the 10th Civil Judge, Senior Division Pune, have not established that they have any locus to prefer the said application. They have nowhere established that they are the legal heirs of the decree holder Amedmal Bhatewada. He submitted that the vital documents were not available when the learned Civil Judge, Senior Division decided their application. He invited my attention to the copies of the documents which are annexed to C.R.A. No.285/2022. According to Shri Godbole, the following

documents were not available when the impugned order was passed. Those documents are as follows :

- i. The noting in the Darkhast No.292/1946 recording that the extract was not produced by the decree holder.
- ii. Directions to the Collector or any officer appointed in that behalf for partition of the property by metes and bounds and for giving possession to the decree holder Amedmal Bhatewada from the Defendants. In the same application, it was further prayed that the cost of the execution be taken from the judgment debtor under Order XX Rule 12 of C.P.C.. That Execution Application was under Order XXI Rule 11 of C.P.C..
- iii. The order dated 19.11.1947 in Execution Application No.1150/1947 issuing notice to the Defendant under Order XXI Rule 22 of C.P.C..
- iv. The order dated 11.2.1948 in the same Darkhast Application mentioning that the judgment debtor was absent and it was sent to the Collector for partition. The next noting shows that the Darkhast was disposed of as per the purshis filed at

Exhibit-8. This order was passed on 15.7.1948. The purshis referred to in that order was dated 15.7.1948 in which it was mentioned by the Plaintiff that he did not want to proceed with the execution proceedings at that point and that the Darkhast be disposed of with cost to be paid by the Defendant. Said Darkhast was disposed of as per Exhibit-8 by the order dated 15.7.1948.

. Copies of these documents are annexed to C.R.A. No.285/2022. The translation of some of the documents which were originally in *modi* script were provided by the Applicants and these copies are annexed to the C.R.A.

11. Shri Godbole submitted that all these documents were not before learned Civil Judge, Senior Division, Pune when he heard and decided the said application and, therefore, it would be appropriate if the matter is remanded back again before the same Judge to decide it by taking into consideration copies of all these documents.

12. Shri Godbole further submitted that proviso to Section 85(2) of the Maharashtra Land Revenue Code (for short, 'MLRC')

provides that where any question as to title is raised, no such partition shall be made until such question is decided by a civil suit. Therefore, the Collector was not empowered to decide the issue regarding the title. In the present case, the title of the alleged legal heirs is seriously in dispute which the Collector is not empowered to decide. He further submitted that the judgments dealing with Section 54 of C.P.C. are in respect of the cases where the original Plaintiff himself has made an application for sending the precept. In the present case, there is a material difference as the application for sending the precept is filed by the alleged legal heirs of the original Plaintiff and not by the Plaintiff himself. The appropriate Civil Court at some point of time will have to decide who are the legal heirs of the original Plaintiff i.e. Amedmal Bhatewada.

13. He further submitted that Rule 4 of the Maharashtra Land Revenue (Partition of Holdings) Rules, 1967 (for short, 'MLR Rules') is important. According to Shri Godbole, whenever the Applicant's title to the holding is disputed, the Collector has to reject the application under Rule 4 of MLR Rules.

14. He further submitted that the purshis at Exhibit-8 in the Darkhast in the year 1948 and other companion documents in the nature of receipts are themselves in the nature of certification of satisfaction of the decree. He further submitted that the learned Judge, in his impugned order, has treated the proceedings as execution proceedings as he has referred to Order XXI Rule 2 of C.P.C.. Once it is treated as execution proceedings, then it is barred by limitation and the application should not have been entertained by the Court.

15. He further submitted that the scope in the Writ Petition as well as in the Civil Revision Application is limited with reference to the impugned order. In the present case, the important documents were not seen by the Court as they were not before the Court when the impugned order was passed and, therefore, at the revisional stage or while deciding the Writ Petition under Article 227 of the Constitution, it would not be proper to examine the effect of those documents and, therefore, it would be appropriate if the matter is remanded back before the same Court for consideration of the issue afresh by taking into consideration those documents. In

support of this contention, he relied on the judgment of the Delhi High Court in the case of **Chelaram Chopra (through L.Rs) Vs. Ramo Devi & Ors.**¹; and on the observations of the Hon'ble Supreme Court in the case of **Nawal Kishore Tulara Vs. Dinesh Chand Gupta and others**².

16. Shri Anturkar, learned Senior Counsel appeared for the Petitioners in Writ Petition (Stamp) No.13161/2022. He submitted that the Petitioners are caught in the fight between the Applicants in C.R.A.No.285/2022 and the purported legal heirs of Amedmal Bhatewada. The Petitioners were granted the development rights by M/s. Concord Co-operative Housing Society and the construction on the said land has progressed substantially. Many flat purchasers have purchased the flats; about 92 flat purchasers have already entered into agreements for purchase of the flats; and at a very belated stage the purported legal heirs of Amedmal Bhatewada have approached the Court. Thus, the interest of the Petitioners and the flat purchasers is seriously affected.

1 passed in RFA no.704/2002 decided on 5.7.2010 (Delhi High Court)

2 (2001) 6 SCC 110

17. Shri Anturkar submitted that, in a partition suit when a preliminary decree is passed, the suit continues till the final decree is passed. In the year 1963, the original plaintiff Amedmal Bhatewada had died. As per Order XXII Rule 3 of C.P.C., if the legal representatives of the sole Plaintiff do not make any application to be made parties to the suit, within the prescribed time, the suit must abate. In the present case, the limitation provided for bringing the legal heirs of the Plaintiff on record as provided under Article 120 of the Limitation Act which could not be more than maximum 90 days, has already expired and, therefore, the suit has abated and no further proceedings can be taken by the contesting Respondents who claimed to be the legal heirs of Amedmal Bhatewada.

18. Shri Anturkar's next submission was that, even otherwise, once the Maharashtra Regional and Town Planning Act, 1966 (for short, 'MRTP Act') was brought into force, its provisions overrides all other acts. Section 2(7) of the MRTP Act refers to sub-division of the plot and, therefore, the Collector was not empowered to

effect partition after the Planning Authority took control of the lands which included the subject properties.

19. Shri Anturkar submitted that Section 54 of C.P.C. mentions the word “estate” and it deliberately does not use the words “property or the land”. The word “estate” is defined under Section 2(8) of the MLRC.

20. He further submitted that Order XXIII Rule 1 provides that, any time after institution of a suit, the Plaintiff could abandon the suit or could abandon part of his claim. In the present case, the impugned order passed on 15.7.1948 shows that the Plaintiff had abandoned his claim and, therefore, no further right remains with the original plaintiff Amedmal Bhatewada and consequently with the legal heirs of Amedmal Bhatewada. He submitted that Order XXIII Rule 4 of C.P.C. provides that nothing in the Order XXIII applies to any proceedings in execution of a decree or order. He submitted that if the proceedings are treated as execution of the decree then the application made by the legal heirs of Amedmal Bhatewada is barred by limitation; and if it is not treated as an execution but only continuation of the suit then the claim of the

original Plaintiff stands abandoned by the Plaintiff himself as is indicated in the order dated 15.7.1948.

21. Shri Gorwadkar, learned Senior Counsel for the Petitioner in Writ Petition No.6701/2022 supported the contentions of Shri Godbole and Shri Anturkar. He submitted that this Petitioner's objection was not considered by the Court while deciding the application in which the impugned order was passed. The Applicants before the Court had not approached the Court with clean hands. There was concealment of material facts as important documents were not produced before that Court. If the Applicants were the legal heirs of the original Plaintiff they should have produced the necessary documents in the suit and the darkhast before learned Judge. Section 47 of C.P.C. provides that all questions arising between the parties to the suit in which the decree was passed relating to the execution are to be determined by the Court executing the decree and not by a separate suit. Therefore, it was necessary for the said Court to have determined the disputed questions before passing any order. In this case, it is

not even decided that the Applicants before the said Court were the legal heirs of the original Plaintiff.

22. He relied on Order XXII Rule 10 of C.P.C. which provides the procedure in case of assignment before the final order is passed. In this case, since the Petitioners had acquired the rights through assignment, they were required to be added as parties by leave of the Court. In this case, not only were they not made parties but they were not even heard. The title of the legal representatives of the original Plaintiff is seriously disputed and only the Court could have decided that issue. He relied on the judgment of this Court in the case of **Khemchand Shankar Choudhari and another Vs. Vishnu Hari Patil and others**³. According to him, this judgment provides that the subsequent purchasers have locus in the proceedings and they are required to be heard. In this case, they were not heard.

23. Learned counsel Shri Soni appeared in C.R.A. No.406/2022 for the Applicant, who was the purchaser of part of the property. He submitted that in the application for precept the

³ 1983(2) Bom. C.R. 294

original Defendants were not present. All the Respondents in the said application were mainly the purchasers of the subject property. The application for precept could have been filed by the original Plaintiff or the original Defendant or their legal representatives. The alleged legal heirs could have filed separate suit for cancellation of the sale-deeds in respect of the subject properties, but since their remedies were barred by limitation, they have adopted this method of approaching the Court. They have not approached the Court with clean hands.

24. He submitted that the Applicants in C.R.A. No.406/2022 were shown as parties in the proceedings in which the impugned order was passed, however, they were not heard at all. This is clear violation of principles of natural justice. He emphasized that the Collector ultimately cannot decide the title. Therefore, sending the precept to the Collector is meaningless. He further submitted that along with the application, the purported legal heirs of Amedmal Bhatewada also filed application vide Exhibit-5 for stay. He submitted that if their stand was that it was only an application for administrative action, then filing of the said application for stay

goes against their stand. There was no possibility or requirement of filing a stay application in an application filed only for administrative acts.

Submissions on behalf of the contesting Respondents :

25. Learned Senior Counsel Shri Tulzapurkar, Shri Mayur Khandeparkar and Shri Surel Shah appeared for the contesting Respondents, who had filed application before the learned Civil Judge, Senior Division in which the impugned order was passed.

26. Shri Tulzapurkar made the following submissions :

- i. The application vide Civil Misc. Application No.1658/2021 was not made in execution of the decree. The decree passed in the suit did not dispose of the suit but the suit is still pending. The decree that was passed was only a preliminary decree and the final decree was not yet passed. After the preliminary decree was passed the Court becomes *functus officio*.
- ii. Sending precept to the Collector is only an administrative order. It is not in the nature of execution of the decree.

Shri Tulzapurkar invited my attention to Section 54 and Order XX Rule 18 of C.P.C..

- iii. Irrespective of the alleged receipts, the Applicants, the Petitioners or anybody else does not get title over the property without any registered sale deed executed by the original Plaintiff Amedmal Bhatewada; because the sale certificate did stand in his name. The preliminary decree declared his right and, therefore, that right could not be taken away from him without any registered sale deed executed by him or on his behalf.
- iv. The impugned order does not decide the rights of the parties and there is no adjudication of any rights. It was only a ministerial direction to send the papers to the Collector to effect the partition as per the provisions of Section 54 of C.P.C.. The application was not in execution of the partition decree but was an application only to bring to the notice of the Court that the papers were required to be sent as directed by the preliminary decree.

- v. In law, such an application itself was not necessary. It was the Court's own duty to send the precept to the Collector. Therefore, there was nothing wrong in reminding the Court to perform its duty. There is no force in the contention that these Respondents have not established that they were the legal heirs of Amedmal. At the stage of filing of the application that issue was not relevant as the Court was only reminded of its duty to send the precept.
- vi. In such cases notice to the other side is not necessary. There is no force in the submission that principles of natural justice are violated as all the parties were not heard before passing of the impugned order; because no adjudication was sought against them in that application. It was just a reminder to the Court. The application itself was not necessary.
- vii. There is no limitation prescribed under any law for reminding the Court to perform its duty.
- viii. There is no question of *res judicata* if successive applications are made reminding the Court to take steps

in accordance with Section 54 of C.P.C.. Therefore, the order dated 15.7.1948 does not affect the present proceedings.

- ix. Partition suit remains pending even till today as only the preliminary decree is passed. The suit concludes only when the final decree is passed for possession by metes and bounds and when possession is given to the decree holder. The Collector was empowered to decide all these issues while effecting such partition pursuant to the precept received by him under Section 54 of C.P.C..
- x. The right accrued in favour of the Plaintiff Amedmal Bhatewada because of the purchase in the auction and since he was granted the sale certificate in respect of the subject properties. The right was not a result of the partition suit but it existed even prior to filing of the partition suit. In filing the partition suit, the Plaintiff was only exercising his right to get the subject properties partitioned and to get the possession. His right, title and interest therefore were never taken away from him.

Hence, the Applicants or the Petitioners could not have interfered with his rights.

- xi. There was no registered document in respect of the subject properties executed by the original Plaintiff any time after he became owner of the half share of the subject properties.
- xii. Shri Tulzapurkar in support of his contentions relied on the following judgments. The ratio of these judgments and their effect will be discussed at the appropriate stage in this judgment :
 - i. **Ramrathibai wd/o Sivinath Pardeshi Vs. Surajpal Bhulai Chaudhari and others⁴**
 - ii. **Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others⁵**
 - iii. **Annasaheb Rajaram Nagane and another Vs. Rajaram Maruti Nagane and others⁶**
 - iv. **Bikoba Deora Gaikwad and others Vs. Hirabai Marutirao Ghorgare and others⁷**
 - v. **Venu Vs. Ponnusamy Reddiar (Dead) through Legal Representatives and another⁸**

4 1996(2) Mh.L.J. 40

5 (2009) 9 SCC 689

6 2001(3)Mh.L.J. 53

7 (2008) 8 SCC 198

8 (2018) 15 SCC 254

- vi. **Dhansukhbhai Fakirbhai Patel Vs. Fakirbhai Dayabhai Patel and others⁹**
- vii. **Arun Ashruba Mhaske Vs. Atmaram Dattu Mhaske and others¹⁰**
- viii. **Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valsan and others¹¹**

27. Shri Mayur Khandeparkar supported these submissions and added his own submissions as follows :

- i. Under Order XXI Rule 2 sub-rule (3), a payment or adjustment which has not been certified or recorded as such shall not be recognized by any Court executing the decree. In this case, the reliance by the Applicants on the alleged receipts executed by Amedmal Bhatewada in favour of the Devkar's has no meaning because such payment or adjustment was not certified by the decree holder to the executing Court and, therefore, those receipts could not be taken into consideration at all.
- ii. Till the year 2014, the entries in the revenue record retained Amedmal Bhatewada's name. The Mutation Entry deleting

9 2006(1) Mh.L.J. 116

10 2007(4) Mh.L.J. 157

11 2022 SCC OnLine SC 737

his name is challenged in different proceedings but it did indicate that Amedmal Bhatewada's right was never extinguished.

- iii. The rights of the parties are crystallized at the stage of passing of the preliminary decree and, therefore, there was no further requirement to bring the legal heirs of the original Plaintiff on record after his death. Therefore, the suit does not abate under Order XXII Rule 3 of C.P.C. as was argued by Shri Anturkar.
- iv. Shri Khandeparkar relied on the following judgments :
 - I. **Ramabai Bhratar Govind Hage Vs. Anant Daji Hage**¹²
 - II. **Saiyad Dawarali Jafarali Vs. Bai Jadi, daughter of Ghanchi Vararshidas Nathubhai, deceased by her heir Ghanchi Naranlal Shivilal, having died pending appeal by his heirs Modi Vadilal Narandas and others**¹³
 - III. **Badamo Devi and others Vs. Sagar Sharma**¹⁴.
- v. He further relied on the Rules framed under the powers conferred under sub-section (2) of Section 328 of the MLRC i.e. the MLR Rules. He submitted that the procedure which

12 1944 SCC OnLine Bom 51

13 1940 SCC OnLine Bom 18

14 (1999) 6 SCC 30

the Collector has to follow pursuant to the precept issued under Section 54 of the C.P.C., is provided under the said MLR Rules.

Brief reference to the impugned order :

28. Before considering the submissions made by rival parties, a brief reference to the observations made in the impugned order is necessary. Learned Judge noted the brief history and submissions of the parties. Learned Judge observed that the letter or adjustment of decree dated 27.10.1945 was not certified before the Court as required by Order XXI Rule 2 of C.P.C. and, therefore, in view of Order XXI Rule 2(3) of C.P.C. and in view of the law laid down by the Hon'ble Supreme Court in the case of **Badamo Devi**, such adjustment which was not certified by the Court can not be considered and recognized by the Court. Learned Judge rejected the contention that the properties are now changed from agricultural to non-agricultural lands and, therefore, Section 54 of C.P.C. was not applicable. According to him, he could not go behind the decree. He further observed that in view of the law laid down in the case of **Annasaheb Nagane** notice was not required to be

issued to any of the parties and no determination was to be made in respect of rights of the parties. He finally held that the precept was required to be sent to the Collector, Pune and accordingly the order was passed on 27.4.2022.

Reasons and conclusion :

29. Since important provisions of C.P.C. are referred to by the parties, it would be advantageous to reproduce them at one place as follows :

“2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

XXXXX

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include--

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication

completely disposes of the suit. It may be partly preliminary and partly final;”

“54. Partition of estate or separation of share.— Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.”

“Order XX

18. Decree in suit for partition of property or separate possession of a share therein .-- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,--

- (1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;
- (2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a

preliminary decree declaring the rights of .the several parties, interested in the property and giving such further directions as may be required.”

“ORDER XXI

2. Payment out of Court to decree-holder. – (1) Where any money payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified ; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly,

(2A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless--

- (a) the payment is made in the manner provided in rule 1;
or
- (b) the payment or adjustment is proved by documentary evidence; or
- (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.”

3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.”

“ORDER XXII

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.-- (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.”

“ORDER XXVI

13. Commission to make partition of immovable property.-- Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.”

Rules 4, 5, 6, 7, 8 and 9 of the MLR Rules :

“4. Power of Collector to reject application for partition: If after hearing the applicant the co-holders and any other persons who appear, the Collector is of opinion that the applicant has no interest in the holding in respect of which the application is made, or the applicant’s title to the holding is disputed he shall reject the application and where the applicant’s title to the holding is disputed, direct the applicant to get the question of his title thereto decided by a Civil Court.

5. Mode of effecting partition.--If the Collector does not reject the application, he shall proceed to effect the partition either personally or through such agency as he may appoint. So far as practicable, whole survey numbers or sub-division of survey numbers shall be allotted and recourse to further division as far as possible, be allotted to each party and care should be taken to ensure that the productivity of the area allotted to each party is in proportion to his share in the holding.

6. Apportionment of assessment.-- The assessment of the holding shall be distributed in proportion to the shares held, in the holding by the co-holders, so however that when the total assessment of all the subdivisions of any survey number in such holding falls short of, or exceeds, the whole assessment of that survey number, the difference shall be equitably distributed over the subdivisions by addition or deduction in the assessment so as to make the total equal to the assessment of the parent survey number.

7. Procedure before confirmation of partition.--After the partition has been completed, the Collector shall hear any objections which the parties may make, and shall either amend or confirm the partition. The partition shall take effect from the commencement of the agricultural year next following the date of such amendment or confirmation of the partition.

8. Recovery of expenses of partition.--Expenses of partition shall be recoverable by the Collector from the parties in the manner provided in subsection (5) of Section 85.

9. Partition under decree of Civil Court.-- When any holding is ordered to be partitioned under decree or order of a Civil Court, the provisions of Rules 5, 6 and 7 shall apply as they apply in relation to partition of a holding on the application of a co-holder.”

30. At the outset it needs to be noted that there is no dispute that the decree relates to an estate assessed to the payment of the revenue to the Government. Therefore, the main thrust of the argument of Shri Tulzapurkar, Shri Khandeparkar and Shri Shah was that issuing precepts under Section 54 read with Order XX Rule 18(1) of C.P.C. was not in the nature of execution of the decree but was only a reminder to the Court for performing its duty in sending the precepts to the Collector and for that purpose the

Limitation Act was not applicable and there was no limitation for making such application.

31. The first judgment relied in support of this proposition was in the case of **Ramrathibai Pardeshi**. The issue before a Single Judge Bench of this Court in this case was whether an application filed under Section 54 of C.P.C. on 15.2.1992 for sending the precept to the Collector having jurisdiction over the subject matter for partition of the agricultural land i.e. estate assessed to land revenue to Government, pursuant to the decree passed on 9.1.1947 was an application for execution of the decree and, therefore, barred by limitation under Article 182 of the Limitation Act, 1908 or under any Article of the Limitation Act, 1963 or under Section 48 of the C.P.C., as was existing prior to 1.1.1964.

After discussing all these provisions, ultimately it was held that an application which was made by the Applicant for issuance of the precept 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 the ministerial act and was neither covered by Section 48 of C.P.C. as was existing prior to 1.1.1964 nor covered

by Article 182 of the Limitation Act, 1908. The application was made by the Applicant therein on 15.2.1992, therefore, it was not covered by any of the provisions contained in the Limitation Act, 1908 or the Limitation Act, 1963 or Section 48 of the C.P.C. as was existing prior to 1.1.1964. After discussing various judgments, it was noted that the application made to the Court which passed the decree for partition of the land assessed to the revenue, for issuance of precept to the Collector is not and cannot be said to be an application for execution of the decree. In that case, such an application was made almost after 45 years after passing of the decree. It was held that, it was neither barred by any law of limitation nor was prohibited under any law. It was held that, no principle of equity can be made applicable when Law of Limitation does not bar making such an application beyond any period.

32. Shri Tulzapurkar then relied on the judgment in the case of **Shub Karan Bubna** decided by the Hon'ble Supreme Court. In this judgment also a reference was made to Section 54 of C.P.C. and Order XX Rule 18 of C.P.C.. The observations of the Hon'ble Supreme Court are very important in the context of the present

case and, therefore, it is advantageous to reproduce the exact paragraph from the said judgment. The important paragraph is paragraph-18, which reads thus :

“18. The following principles emerge from the above discussion regarding partition suits:

18.1. In regard to estates assessed to payment of revenue to the government (agricultural land), the court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with Section 54 of Code. Such entrustment to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of government in regard to revenue. (The second reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the court at all. The court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.

18.2. In regard to immovable properties (other than agricultural lands paying land revenue), that is buildings, plots etc. or movable properties:

(i) where the court can conveniently and without further enquiry make the division without the assistance of any

Commissioner, or where parties agree upon the manner of division, the court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii) where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division. In such cases, normally a Commissioner is appointed (usually an Engineer, Draughtsman, Architect, or Lawyer) to physically examine the property to be divided and suggest the manner of division. The court then hears the parties on the report, and passes a final decree for division by metes and bounds.

The function of making a partition or separation according to the rights declared by the preliminary decree, (in regard to non-agricultural immovable properties and movables) is entrusted to a Commissioner, as it involves inspection of the property and examination of various alternatives with reference to practical utility and site conditions. When the Commissioner gives his report as to the manner of division, the proposals contained in the report are considered by the court; and after hearing objections to the report, if any, the court passes a final decree whereby the relief sought in the suit is granted by separating the property by metes and bounds. It is also possible that if the property is incapable of proper division, the court may direct sale thereof and distribution of the proceeds as per the shares declared.

18.3. As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have

the effect of disposing of the suit. The suit continues to be pending until partition, that is division by metes and bounds, takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.”

33. In the present case, the category No.18.1 mentioned hereinabove is squarely applicable and, therefore, there can only be one decree and the matter does not come back to the Court at all.

. The clear observations of the Hon’ble Supreme Court in **Shubh Karan Bubna’s** case show that in the case of estates assessed to payment of revenue to the Government, the Court is required to pass ‘only one decree’ and in respect of the immovable properties which cannot be conveniently divided without further inquiry there is a procedure for preliminary decree and final decree. In either case, the Limitation Act does not apply and an application can be made only as a reminder to the Court to do its duty.

In the present case, it is undisputed that the land is assessed to payment of the revenue to the Government and, therefore, the first part of the observation of the Hon'ble Supreme Court applies and only one decree is necessary which was already passed by the Court in the year 1945.

34. In this very context it would be advantageous to refer to the case of **Ramabai Govind**. This is a Full Bench judgment of this Court. Even in this judgment, the provisions of Order XX Rule 18, Order XXVI Rules 13 & 14 and Section 54 of the C.P.C. were considered in the context of the earlier judgments.

. Lokur, J. in his judgment mentioned that the Collector cannot pass a final decree or any other decree in civil suit for partition; and yet the Civil Court is not required by the Code to pass any further decree or to make its decree final at any stage. Upon this footing the first and only decree to be passed by the Court would be a final decree. A reference was made to the case of Jacinto Vs. Fernandez, (1939) 41 Bom.L.R. 921. When an order in the form prescribed in Order XX rule 18(1) is made, the Court's duties are finished; but as held in the case of Dev Gopal Savant Vs. Vasudev

Vithal Savant, (1941) 43 Bom.L.R. 971, the Court was not deprived of its judicial control of its decree but that control is very limited. It is only if the Collector contravenes the decreetal order, or transgresses the law or otherwise acts ultra vires, or refuses to carry out the decree, that his action is liable to be controlled and corrected by the Court which passed the decree. In **Jacinto's** case, Beaumont C.J. described the order directing the partition of the lands assessed to the Government revenue to be effected by the Collector as a final decree. In the conclusion, Lokur, J. observed that the Limitation Act is not applicable whether such decree is taken to be preliminary or final. Rajadhyaksha, J. agreed with Lokur, J. and observed that whether the decree for partition under Order XX Rule 18(1) of C.P.C. is regarded as preliminary or final; there was no bar of limitation to the application being sent to the Collector in order that he may carry out the directions given in the decree. Weston, J. also reached the same conclusion but he specifically held that he agreed with the ratio in **Jacinto's** case that the decree in the form of Order XX Rule 18(1) of C.P.C. must be regarded as a final decree.

35. In the same judgment of **Ramabai Govind**, it was observed thus :

“ But in the case of a decree under Order XX, Rule 18(1), of the Code of Civil Procedure, the Court is not even now expressly required to pass any further decree. When the Court passes a preliminary decree under Sub-rule (2), it appoints a Commissioner under Order XXVI, Rule 13, to effect a partition, after receiving his report, the Court is to pass a final decree under Order XX, Rule 14(3). There is no corresponding provision in the Code that after making a partition the Collector should report to the Court in order that it may pass a final decree. In fact no other final decree is ever passed, after a decree is once passed Under Order XX, Rule 18(1). A preliminary decree cannot for ever remain a preliminary decree, but contemplates a final decree upon which the decree-holder may take out execution, a term which in decrees for partition of property must include delivery of possession. The Collector cannot pass a final or indeed any other decree in a civil suit for partition, and yet the Civil Court is not required by the Code to pass any further decree or to make its decree final at any stage. Upon this footing the first and only decree to be passed by the Court would be a final decree. As pointed out by Beaumont C.J. in *Jacinto v. Fernandez*, when an order in the form prescribed in Order XX, Rule 18(1), is made, the Court's duties are finished though as held in *Dev Gopal Savant v. Vasudev Vithal Savant* I.L.R (1887) Bom. 371, the Court is not deprived of its judicial control of its decree. But that control is very limited. It is only if the Collector contravenes the decretal order, or

transgresses the law or otherwise acts ultra vires, or refuses to carry out the decree, that his action is liable to be controlled and corrected by the Court which passed the decree. Apart from this limited control the Collector can give effect to the partition made by him, without waiting for confirmation by the Court, and deliver possession of the shares to the respective sharers. Thus the Court having nothing further to do with the decree passed by it Under Order XX, Rule 18(1), Beaumont C.J., in *Jacinto v. Fernandez*, described the order directing the partition of the lands assessed to Government revenue to be effected by the Collector as a final decree.

If on this line of reasoning the decree be regarded as final it must be recalled that not every final decree is capable of execution. A merely declaratory decree, though final, is by its very nature, incapable of execution. So too is a decree under Order XX, Rule 18(1), of the Code of Civil Procedure. It merely declares what are the shares of the parties in the suit lands assessed to Government revenue, and by whom the partition is to be effected, but it does not embody a direct order to the Collector or to the judgment-debtor to do anything. From this point of view it is merely declaratory. It is true that Section 54 appears in the Civil Procedure Code under the heading "Procedure in execution." That section may have been placed there only to show that such a decree is incapable of execution by the Court, and that if a party wants a partition effected as directed by the decree, it is only the Collector who can effect it. For that purpose he must request the Court to send the decree to the Collector. The sending of the decree to the Collector is only a ministerial act and not execution of the decree.”

. This particular observation was relied on in the case of **Ramrathibai Pardeshi**.

36. In **Venu's** case it was held that a preliminary decree for partition crystallized rights of parties seeking partition to the extent declared and equities remained to be worked out in final decree proceedings. Till final decree is passed, no question of limitation arises against right to claim partition as per preliminary decree. In that case, there was a reference to the appointment of a Court Commissioner and in that case the application for execution of the decree for partition crystallized rights of the parties.

37. Thus, all these judgments suggest that as per Order XX Rule 18(1) of C.P.C. such decree is final decree. There is a definite difference between Order XX Rule 18 sub-rule (1) and Order XX Rule 18 sub-rule (2) of C.P.C.. In sub-rule (1) there is a reference to the 'decree'; whereas in sub-rule (2) there is a reference to a 'preliminary decree'. In the same Rule, in two different sub-rules, in respect of two different properties viz., in respect of an estate assessed to the payment of revenue to the Government only the word 'decree' is used; and in respect of any other immovable

property where the partition cannot be conveniently effected without further inquiry, the word used is 'preliminary decree'. This difference has some significance which is elaborated in the judgments of **Shub Karan Bubna** and **Ramabai Govind**.

. In the present case, it is quite clear that Order XX Rule 18 sub-rule (1) of C.P.C. is applicable and not Order XX Rule 18 sub-rule (2) and, therefore, the decree passed in this present case cannot be described as 'a preliminary decree'.

38. In the case of **Annasaheb Nagane**, it was again held that the step taken by the decree holder by making an application to the Court in the case of decree in a partition suit was not an application for execution but it could only be treated as a request to the Court to send the necessary papers to the Collector for effecting partition under Section 54 of the C.P.C.. Such an application is nothing but a request to the Court to discharge its ministerial duty. Importantly, it was observed that in view of this, even no notice to any of the parties to the application was necessary as it was not a petition seeking any adjudication of any of the rights of the parties. It was also observed that dismissal of

the first execution application could not operate as *res judicata* because the step taken by the decree holder just to remind the Court of its duty can hardly be said to be anything attracting the provisions of Section 11 of C.P.C..

. In the present case before this Court, the argument was that at the first instance the Darkhast was rejected for non-production of the extract in the year 1946. Thereafter even in the year 1947, the Darkhast was closed because the Plaintiff-decree holder did not want to take any further steps. Therefore, it was argued that now further procedure was barred; but this judgment makes it clear that such earlier order would not operate as a bar and fresh application reminding the Court to take steps under Section 54 of C.P.C. was always permissible.

39. Shri Tulzapurkar relied on the judgment of a Division Bench of this Court in the case of **Paygonda Surgonda Patil Vs. Jingonda Surgonda Patil**¹⁵. In paragraph-17 of that judgment, it was held that the higher revenue authority i.e. the Commissioner had jurisdiction to entertain an appeal or a revision against any order of

¹⁵ 1967 Mh.L.J. 880

the Collector passed in proceedings relating to the execution of a decree for partition of revenue paying lands passed by a Civil Court. **Arun Mhaske's** case makes reference to MLR Rules mentioned hereinabove. It was observed that the partition of these lands has to be effected by the Collector or his subordinate officer in accordance with these Rules. The Civil Court determines the shares and putting the decree holder in possession is duty of the Collector. Ordinarily the Civil Court after passing the decree becomes defunct so far as putting the decree holder in actual possession.

40. Shri Godbole submitted that Rule 4 of the MLR Rules provides that the Collector shall reject the application when the Applicant's title to the holding is disputed. However, Rule 9 thereof does not refer to Rule 4 at all and moreover this application is not filed by any Applicant before the Collector but the Civil Court has sent the precept to him after the holding was ordered to be partitioned. The Application referred to in Rule 4 is the Application of a co-holder made under Rule 2. Rule 4 is not

applicable when the holding is ordered to be partitioned under decree of a civil Court.

41. A reference was made by Shri Khandeparkar to the MLR Rules, as mentioned earlier. Rule 9 thereof provides that Rules 5, 6 and 7 shall apply when any holding is ordered to be partitioned under decree or order of a Civil Court. Rule 5 provides for the mode of effecting partition. The Collector is expected to effect the partition either personally or through such agency as he may appoint. He is expected to take precautions mentioned under that Rule 5. Thereafter the assessment of the holding is to be distributed in proportion to the share held by the co-holders and the difference can be equitably distributed over the sub-divisions. Rule 7 is important because it provides that if the partition is completed, the Collector shall hear any objections which the parties may make, and shall either amend or confirm the partition. This means that the Collector has to first complete the partition and then hear the objections and make suitable amendment to the partition which he has already made. Thus, this is the next stage after the precept is

sent to him under Section 54 read with Order XX Rule 18(1) of C.P.C. .

42. In the case of **Kattukandi Krishnan**, recently the Hon'ble Supreme Court made a reference to the difference between a preliminary and a final decree. It was observed that the preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree and after the inquiry having been conducted and rights of the parties being finally determined, a final decree incorporating such determination needs to be drawn up. Making observations on the practice followed, the Hon'ble Supreme Court made some suggestions and issued some directions for early disposal of the suits and to get the relief quickly and effectively.

43. In answer to Shri Anturkar's argument that since the suit continues after the preliminary decree and since the legal heirs of the original Plaintiff were not brought on record within the limitation period, the suit stands abated; Shri Mayur Khandeparkar relied on the ratio of the judgment in the case of **Saiyad Jafarali**. In

that case, the reference was made to Order XXII Rule 4 of C.P.C.. It was in respect of the death of the original Defendant. It was observed that the rights of the parties are crystallized by the preliminary decree and, therefore, Order XXII Rule 4 does not apply to a case in which a preliminary decree has been passed. The language of Order XXII Rules 3 & 4 of C.P.C. in respect of the Plaintiff and the Defendant respectively is similar. Therefore, this ratio applies in case of death of the Plaintiff as well, because in either case, the rights of the parties are crystallized by the preliminary decree. Shri Khandeparkar therefore submitted that if the decree in the present case is treated as a final decree then there is no question of continuation and hence abatement of the suit and; even if it is treated as a preliminary decree, the rights are crystallized after the preliminary decree and, therefore, death of the sole Plaintiff does not mean that the suit abates if the legal heirs are not brought on record, within the limitation period.

In view of this, the submission made by Shri Anturkar that the suit has already abated cannot be accepted.

44. Shri Anturkar submitted that the Collector cannot effect partition once the Planning Authority is appointed in respect of the area in which the land is situated. He relied on Section 2(7) of the MRTP Act which defines 'development'. Though the definition of 'development' in the Act also includes subdivision of any land, it is for the purpose of development of the land for carrying out all building, engineering, mining or other operations over or under the land. It is different from partition of the land pursuant to the decree regarding the suit property. And, therefore, it will not affect the powers of the Collector under Section 54 of C.P.C..

45. The above discussion shows that the application under Section 54 of C.P.C. read with Order XX Rule 18(1) of C.P.C. is not in the nature of execution but is only a reminder to the Court to do its duty. Therefore the earlier applications styled as Execution Applications in the year 1946 and 1947 do not come in the way of the contesting respondents in this Civil Revision Application/Writ Petitions. The payment made by Shankar and Kisan to the original Plaintiff is disputed. In any case, it is not further recorded in any Court proceedings specifically by the original Plaintiff Amedmal

Bhatewada giving up his right in the property. At this stage, it only remains a matter of interference and no conclusion can be reached in these proceedings. There are no steps taken under Order XXI Rule 2 of C.P.C. In any case, this aspect is outside the scope of the order passed by the learned Civil Judge, Senior Division, Pune which is impugned in this particular case.

46. Taking this line further, once it is held that earlier applications styled as Darkhast or Execution Application in the year 1946 and 1947 are not really execution applications; it was always open for the decree holder or any other person including his legal heir to remind the Court to perform its duty by sending the precept to the Collector. Therefore, Shri Godbole's submissions that the documents which were not before the Court are vital documents; is not material. These documents do not make any difference in the present case. It was the duty of the Court to send the precept to the Collector which was done by learned Judge by passing the order. The learned Judge was not required to consider these documents or adjudicate any issue including locus of the

parties at that stage. He was not even required to hear any parties at that stage.

47. It cannot be overlooked that, at present some construction is made on the suit properties and many flat purchasers have paid their hard earned money for purchasing the flats. In the fight for ownership of the land, they are unfortunately getting adversely affected. Fortunately both the sides have shown sensitivity to the issue. Shri Khandeparkar submitted that there is still sufficient open land available and, therefore, the Collector can effectively make partition without affecting the structure. In this context, it is not necessary to make any further comment except expressing hope and trust that the Collector at an appropriate stage will keep the interest of the flat purchasers in his mind in giving effect to the precept sent to him. It is clarified that the Collector shall act in accordance with law by following due procedure.

48. Thus, from the above discussion it is clear that learned Judge has not committed any illegality or irregularity in passing the impugned order. He has exercised his jurisdiction properly. The

order is in conformity with the provisions and the procedure under the law.

49. With the result, C.R.A. No.285/2022, W.P. No.6701/2022, C.R.A. No.406/2022 & W.P.(St.) No.13161/2022 are dismissed. In view of dismissal of these matters, the Interim Applications do not survive and are disposed of.

(Sarang V. Kotwal, J.)

50. At this stage, learned Senior Counsel Shri Godbole prays that the interim relief granted vide order dated 24.6.2022, which is in operation till today, be continued for a reasonable period. The contesting Respondents opposed this prayer.

51. Considering that the said relief is operating since 24.6.2022 till today, I see no harm in extending the said relief for a further period of four weeks from today. Hence, the relief granted vide order dated 24.6.2022 to continue for a further period of four weeks from today.

(Sarang V. Kotwal, J.)

Deshmane (PS)