

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4042 OF 2021

Bhimrao Rajaramji Wadnerkar thr L.R. __ Vs. __ Sheshrao Rajaramji Wadnerkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.B.Kasat, Advocate for petitioner
Mr. N.A.Gawande, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 20/02/2023

1] Heard Mr. Kasat, learned counsel for the petitioner and Mr. Gawande, learned counsel for the respondent.

2] The petition challenges the order dated 20.3.2018 passed by the learned Trial Court rejecting the application under Section 54 read with Order 20 Rule 18 of the CPC, for resending the precept to the Collector under Section 54 of the CPC in pursuance to the preliminary decree dated 6.10.1994 passed in RCS No. 109/1992. The learned Trial Court has dismissed the application holding that it was not within limitation of 12 years.

3] Though Mr. Gawande, learned counsel for the respondent opposes, it is necessary to note that in proceedings under Section 54 of the CPC, the question of the Limitation Act being applicable does not arise at all, as, after passing of the preliminary decree, all that the

Court is required to do is to send the precept to the Collector for division of the land into metes and bounds and thereafter submit his report to the Court, whereupon a final decree is required to be passed.

4] In the instant case, there is no dispute that the precept was sent to the Collector, who unfortunately has lost the entire record. When this position was brought to the notice of the petitioner, the application stated above came to be filed, consequent to which it was necessary for the Court below to have reissued the precept, so that the preliminary decree could be executed. In **Annasaheb Rajaram Nagane and anr vrs. Rajaram Maroti Nagane and others**, 2001(3) Mh.L.J 53, the position regarding applicability of Limitation Act has been considered and answered in the negative in respect of a precept sent to the Collector under Section 54 (4) of CPC, in view of which the impugned order is hereby quashed and set aside and the application below Exh.1 is hereby allowed. The learned Trial Court is directed to prepare the precept and send it to the Collector for partition of the property in terms of the decree passed by the Court below.

5] Writ petition is allowed in above terms. No costs.