



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13426 OF 2025

BALASAHEB S/O. MALLAPPA NAKSHE .. Petitioner
(Original Plaintiff No.1)

VERSUS

1. THE AMBIKABAI DAGDU DHARNE (DIED)
(Original Plaintiff No.2)
Through her L.R.s.

2A. Ramraje Dagdu Dharne
2B. Laxman Dagdu Dharne
2C. Bharat Dagdu Dharne
2D. Savita Satish Bulbule

2. SUBHADRABAI MALLAPPA NAKSHE (DIED)
(Original Defendant No.1)
Through L.R.s.
Petitioner No.1 and Respondent No.2

3. VAIJNATH SATYANAPPA CHALWADE .. Respondents
(Original Defendant No.1)

...
Advocate for the Petitioner : Mr. Ashish T. Jadhavar
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CORAM : ARUN R. PEDNEKER, J.
Date : 19.11.2025

ORDER:

1. Heard.

2. By the present petition, the petitioner challenges the common order dated 29.07.2025, passed below Exhibit-39 and Exhibit-40 in execution proceedings filed by Judgment Debtors

No.3A to 3D under Order XXI Rule 29 and Section 47 read with Order XXI Rule 97 of the CPC for stay of the execution proceedings and re-determination of the shares of the decree holder and the judgment debtor.

3. The facts in brief are that in RCS No.134/1976 it was decreed that the mother of Judgment Debtors No.3A to 3D Ambikabai would get 1/9th share and the decree holder Balasaheb and the stepmother of decree holder namely Subhadrabai would get 4/9th share of the joint hindu family and, accordingly, the preliminary decree is prepared to that effect. Meantime, Subhadrabai and, Ambikabai - plaintiff no.2, died. So also, as per amended provision of Section 6 of the Hindu Succession Act introduced in the year 2005, the daughter would stand on the same footings as a son and she would be entitled to get equal share as that of a son.

4. In the instant case, it is stated in the preliminary decree that Ambikabai would get only the notional share as would be available to her father. Thus, at the stage of final decree proceeding, application is filed by Ambikabai for redetermination of the shares. The petitioner (Decree Holder) contended that the trial court has given specific direction in the preliminary decree to allot the joint family property and the same is not challenged in appeal

and has attained finality. Thus, there can be no redetermination of shares. The executing court cannot re-determine the share unless the decree is modified or quashed in accordance with law and the applications are devoid of merits.

5. The executing court on consideration of the material and arguments held that the Judgment Debtors No.3A to 3D are entitled for redetermination of their shares and, as such, the further execution of the proceedings are stayed until the redetermination of the shares.

6. The petitioner challenges the impugned order of the executing court contending that the executing court cannot go behind the decree and unless the decree is altered by the appellate court, the executing court cannot alter the decree and has to execute the decree as it is. The executing court has no role to re-determine the shares once the decree stands.

7. This issue is squarely covered by the Judgment of the Hon'ble Apex Court in the case of **S. Sai Reddy Vs. S. Narayana Reddy and others, (1991) 3 SCC 647**, while dealing with Clause IV of Section 29-A of the Hindu Succession Act has observed that, when a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final

decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. It is further observed that a preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. The court observed that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment.

8. Similar view is taken by the Hon'ble Apex Court in the case of **Prema Vs. Nanje Gowda and others, (2011) 6 SCC 462**. It is observed that, if, after passing of preliminary decree in a partition suit but before passing of final decree, there has been enlargement or diminution of the shares of the parties or their rights have been altered by statutory amendment, the Court is duty bound to decide

the matter and pass final decree keeping in view the changed scenario.

9. Considering the law declared by the Hon'ble Supreme Court, no case is made out for interference.

10. The Writ Petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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