

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.6207 OF 2024**

1. Sambhaji Balasaheb Shinde
Deceased through legal heirs.
- 1a. Ratanabai Sambhaji Shinde
Age: 45 years, Occupation: Household
- 1b. Tanaji Sambhaji Shinde
Age: 45 years, Occupation: Agriculture
- 1c. Rajendra Sambhaji Shinde
Age: 45 years, Occupation: Agriculture,
1a to 1c R/o. Koparde, Tal: Khandala,
District: Satara.
- 1d. Jayashree Ashok Bhoite
Age: 40 years, Occupation: Housewife,
R/o. Sansar, Bhavani Nagar,
Besides Shankar Karkhana
District: Satara
2. Chandrakant Balasaheb Shinde,
Age 67 years, Occu: Agriculture,
R/o. Koparde, Tal Khandala & District: Satara. ...Petitioners

Versus

1. Ankush Balasaheb Shinde
Age-79 years, Occ Agriculture
R/o. Koparde,
Tal Khandala & District: Satara.
2. Bhanudas Balasaheb Shinde
Age- 65 years, Occ Agriculture
R/o. Koparde, Tal Khandala & District: Satara
3. Jagannath Bhikaji Mane
Deceased through legal heirs
- 3a. Ramdas Jagannath Mane
Age 32 years, Occ Agriculture
R/at Ganapati Ali. Rahul Singh Machin
Wai, Tal Wai, Dist Satara

4. Ganapat Bhikaji Mane
Deceased through legal heir
 - 4a. Mahadev Ganapat Mane
Age 25 years, Occ Agriculture
R/at Tambawe, Tal Phaltan, District Satara
 - 4b. Hanmant Ganapat Mane
Age-25 years, Occ Agriculture
R/at Tambawe, Tal Phaltan, District Satara
 5. Sampat Bhikaji Mane
Age-72 years Occ Agriculture
R/at Tambawe, Tal Phaltan, District Satara
 6. Pandharinath Raghunath Bhunje
Deceased through legal heirs
 - 6a. Rajendra Pandharinath Bhunje
Age 40 years Occ Agriculture
R/at Tambawe, Tal Phaltan, District Satara
 - 6b. Ramesh Pandharinath Bhunje
Age 38 years Occ Agriculture
R/at Tambawe, Tal Phaltan, District Satara ...Respondents
- ...
- Mr. Vaibhav R. Gaikwad, Advocate for Petitioners.
Mr. Kirankumar Phakade Advocate for Respondents.

...
CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 08th OCTOBER, 2025.
PRONOUNCED ON : 15th OCTOBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 26.02.2020 passed below Exhibit 39 in Regular Darkhast No.14/2014 by Civil Judge Junior Division, Khandala and further seeks to allow

application below Exhibit-18 and dismiss Regular Darkhast No.14/2014.

3. It is contention of petitioners that Regular Civil Suit No.29/1968 was instituted by them for partition and separate possession of suit properties. The land admeasuring 3 acres from Southern side of Survey No.110/2 was sold by defendant nos.1 to 3 to defendant no.7 for marriage expenses on condition to reconveyance. The land was put into possession of defendant no.7 in pursuance to sale deed with condition to repurchase. The land Survey No.110/2 was also suit property alongwith other suit properties. The suit was compromised and consent decree was passed on 16.08.1970. As per terms of settlement, it was agreed that amount of Rs.2500/- is to be paid to defendant no.7 towards condition of repurchase of land. The defendant nos.1 and 2 had obligation to pay Rs.625/- and rest of amount was to be paid by plaintiffs to defendant no.7. After receipt of said amount, defendant no.7 had agreed to reconvey land. The defendant nos.1 and 2 were entitled to receive share in suit property after payment of amount of Rs.625/- to defendant no.7.

4. The defendant nos.1 and 2 filed Regular Darkhast No.24/1982 after 12 years of compromise decree. However, since they failed to pay amount of Rs.625/- towards their 1/4th share, execution proceeding was dismissed on 18.01.1986. The defendant no.1 has filed present Regular Darkhast No.14/2014 after 20 years of dismissal of his earlier

Regular Darkhast No.24/1982 and filed application below Exhibit-18 seeking permission to pay amount of Rs.1125/-. The petitioners contested said application and also filed independent application Exhibit-39 seeking dismissal of Regular Darkhast No.14/2014 as not maintainable.

5. Mr. Vaibhav Gaikwad, learned Advocate appearing for petitioners submits that respondent no.1 alongwith original defendant no.1 were under obligation to pay amount of Rs.625/- towards 1/4th share in land, which was in possession of defendant no.7 and on deposit of such amount, entitled to seek partition and separate possession of their shares in suit property. Since defendant nos.1 and 2 failed to deposit amount, petitioners paid amount of their share to original defendant no.7. Therefore, defendant nos.1 and 2 have lost their rights to seek execution of decree and entertain execution petition, which would not maintainable.

6. Mr. Kirankumar Phakade, learned Advocate appearing for respondent/original defendant no.2 submits that no time was fixed for making payment of Rs.625/- as per terms of compromise decree. Since preliminary partition decree was passed based on terms of compromise, there is no limitation for entertaining application for execution. The Trial Court has rightly considered aforesaid legal position and allowed application at Exhibit-18 permitting respondents to deposit amount.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it cannot be disputed that petitioners and respondent nos.1 and 2 are family members. The decree for partition and separate possession of joint family property has been passed on 16.08.1970. The land Survey No.110/2 was in possession of original defendant no.7 in pursuance to sale deed with condition of repurchase. As per decree, it was agreed that defendant nos.1 and 2 would have $1/4^{\text{th}}$ share in said land, whereas plaintiffs would have $3/4^{\text{th}}$ share. They agreed to pay total amount of Rs.2500/- to defendant no.7 to repossess property put into possession of defendant no.7. The defendants agreed to pay $1/4^{\text{th}}$ amount i.e. Rs.625/-, whereas plaintiffs were to pay balance of amount. It is admitted that, since petitioners/plaintiffs have paid entire amount of Rs.2500/- to defendant no.7, acquired possession of land Survey No.110/2.

8. The original defendant no.2 (present respondent no.1) had filed Regular Darkhast No.24/1982. However, it was dismissed for want of prosecution. Later on, he filed Regular Darkhast No.14/2014, in which he made application seeking permission to deposit amount of his share and seeks partition of property as agreed.

9. Looking to nature of consent decree it cannot be disputed that it is preliminary decree, as final decree could have been passed only when parties comply with their obligations and Collector in exercise of powers under Section 54 of Code of Civil Procedure carve outs

shares of respective parties. In this background, reference can be given to observations of Supreme Court in case of ***Bimal Kumar & Another Vs. Shakuntala Debi & Others***¹, wherein it is observed as under:

“A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is the final decree. Thus, fundamentally, the distinction between preliminary and final decree is that: a 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 which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.”

10. Applying aforesaid principle to facts of present case, it can be observed that decree in question merely declares right and shares of parties and leaves room for further enquiry. Once enquiry is conducted, rights of parties would be determined and final decree can be passed.

11. Once it is held that decree in question is preliminary decree and it is admitted that parties have not effected partition by metes and bounds as per preliminary decree, there is no question of any limitation running against right to claim partition as per preliminary decree. The Supreme Court in case of ***Venu Vs. Ponnusamy Reddiar (Dead) Thr. LRs & Anr.***² observed that unless final decree is passed in suit for partition,

¹ (2012) 3 SCC 548.

² 2017 AIR SC 2447.

it is duty of Court to take necessary steps in pursuance to passing final decree. It does not contemplate of filing any application by parties or passing final decree. The preliminary decree will not dispose of suit and suit continues. It is further observed that any application for drawing up a final decree in terms of preliminary decree passed in partition suit cannot be fettered by Limitation period. The specific observations to that effect can be found in paragraph no.20, which reads thus:

“20. I am of the opinion that an application for drawing up a final decree in a partition suit is in no way an application contemplated under the Limitation Act. It is a reminder to the Court that something which the Court is obliged to do has not been done and so, such an application, is not governed by any provision of the Limitation Act. When once the rights of the parties have been finally determined in a preliminary decree, an application by a party thereto or the legal representatives, for effecting the actual partition in accordance with the directions contained in the preliminary decree can never be construed to be an application within the meaning of the Limitation Act. It shall be taken to be an application in a pending suit and therefore the question of limitation does not arise.”

12. Looking to aforesaid exposition of law, application filed by defendant/respondent no.1-Ankush Shinde below Exhibit-18 cannot be thrown out referring to any provision of Limitation Act. The Executing Court is, therefore, justified in allowing application at Exhibit-18 and permitting him to deposit amount of Rs.1125/-, which includes even amount payable to defendant nos.4, 5 and 6 as per clause no.4 in compromise decree. Eventually, application seeking dismissal of execution proceeding filed by petitioners below Exhibit-39 is also

rightly rejected. In that view of matter, no case is made out to interfere in impugned order. In result, Writ Petition stands dismissed.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2025