

Jvs.

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

WRIT PETITION NO. 11080 OF 2018

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT
VISHWANATH
SALUNKE
Date: 2025.07.31
18:46:42 +0530

Vishnu Bapu Pachangane & Jadhav,	}	
since deceased, through LRs. (1A)	}	
Dattatray Vishnu Pachangane & Ors.	}	Petitioners
versus		
Nivruti Bapu Pachangane & Jadhav,	}	
since deceased, through LRs. (1A)	}	
Tarubai Nivruti Pachangane & Ors.	}	Respondents

Mr. Prafulla B. Shah with Ms. Gunjan P. Shah i/b. Mr. Kayval Shah for petitioners.

Mr. Saurabh Bachhawat with Ms. Dhanshree Kulkarni i/b. Mr. Abhishek Adke for respondents 1A & 1B.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 31, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 22nd February 2017 passed by the District Judge, Satara in Miscellaneous Civil Appeal No. 124 of 2015, by which, the objection preferred by the petitioner to the execution petition filed by respondents has been rejected.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the original plaintiffs filed a suit being RCS No. 61 of 1973 seeking relief of partition of joint family property. The aforesaid civil suit was decreed vide judgment and decree dated

11th July 1979. The Trial Court held that the plaintiffs are entitled to 50% of the joint family property, whereas, the defendant no. 2 was held entitled to ¼th share in the property. The plaintiffs filed an execution application being Darkhast No.75 of 1981, which was dismissed for want of prosecution on 20th February 1985. Thereafter, the present respondents, namely legal representatives of defendant no. 2 filed application being Darkhast No. 2 of 2010 for ¼th share in the property. In the aforesaid proceedings, the petitioners filed an objection. The executing Court, by an order dated 22nd April 2015, allowed the execution application filed by the respondents/legal representatives of defendant no. 2 and rejected the objection preferred by the petitioners. Being aggrieved by the aforesaid order, the petitioners preferred an appeal. The Appellate Court, by an order dated 22nd February 2017, has dismissed the appeal. Hence this petition.

3. Learned counsel for the petitioners submitted that the impugned execution application filed by the respondents was barred by *res judicata* and limitation as it is filed after a period of 30 years from the date of decree.

4. On the other hand, learned counsel for respondents submitted that there is distinction between a preliminary decree and a final decree, which has been noticed by Hon'ble Supreme Court in the case of **Abdul Rejak Laskar vs. Mafizur Rahman & Ors.**, reported in **2024 SCC OnLine SC 3845**.

5. I have considered the submissions made by both sides and perused the record.

6. It is pertinent to note that the plaintiffs' execution being Darkhast No. 75 of 1981 was dismissed for want of prosecution on 20th February 1985. Thereafter, the legal representatives of defendant no. 2 filed an application for execution in respect of their ¼th share in the property. The limitation would commence when a final decree is drawn. The Appellate Court, by assigning cogent reasons in para 18 of its order, has rejected the objection preferred by the petitioners. Article 136 of the Limitation Act, 1963 has no application to the facts of the case as the decree in question is preliminary decree.

7. The impugned order passed by the Appellate Court neither suffers from jurisdictional error nor any error apparent on the face of the record warranting interference of this Court in exercise of power under Article 227 of the Constitution of India.

8. In the result, the writ petition fails. It is hereby dismissed.

(CHIEF JUSTICE)