IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 7th OF AUGUST, 2023

CIVIL REVISION No. 477 of 2015

BETWEEN

1. RAJDHAR S/O TILAKDHARI GRAM MAHMOODPUR TEH- SIRMAUR (MADHYA PRADESH)

2. RAMSUSHIL S/O TILAKDHARI OCCUPATION: NONE GRAM MAHMOODPUR, TEH. SIRMAUR, (MADHYA PRADESH)

.....APPLICANTS

(BY MS. SANJANA SAHNI - ADVOCATE)

AND

SMT. DHOKIYA W/O SHRI RAMGOPAL GRAM MAHMOODPUR TAHSIL H- SIRMAUR (MADHYA PRADESH)

....RESPONDENT

(BY SHRI NITYANAND MISHRA - ADVOCATE)

This revision coming on for hearing this day, the court passed the following:

ORDER

This civil revision has been preferred by the applicants/judgment debtors 1-2 challenging the order dated 29.10.2015 passed by 1st Civil Judge Class-II, Sirmour, District Rewa in Execution Case No.66-A/2006 whereby applicants/judgment debtors 1-2's objection/application under Order 21 Rule 23(2) CPC for dismissal of execution proceedings as barred by limitation, has been dismissed.

2. Short facts of the case are that in the civil suit filed for declaration of title/share(s), partition and separate possession as well as for mesne profits, 1st Civil Judge Class II, Rewa in Civil Suit No.66-A/74 passed judgment and decree on 31.03.1979, which was affirmed by District Judge, Rewa vide judgment and decree dated 27.08.1982 and finally the matter was decided on 01.02.1988 by High Court in SA no. 584/1982. Relevant paragraph 8 & 9 of the judgment passed in second appeal, are quoted as under:-

> "8. To sum up, the factual position emerging from the discussion aforesaid is that the respondent is entitled to 1/10th share in the agricultural lands mentioned in 'Scheduled-A' of the plaint. Since this land is only 23.75 acres, her share would work out to 2.37 acres only, which she is entitled to obtain by partition. She also has 1/20th share in the house and well mentioned in 'Schedule-B' of the plaint, which she is entitled to get partitioned in accordance with law. As regards movable properties mentioned in 'Schedule-B' of the plaint, it is not proved that it was the joint family property and, therefore, she is not entitled to any share in the same.
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> 9. Except for the modification aforesaid, the appeal fails and is dismissed. The partition will now be done as directed by the impugned- judgment and decree."

3. Learned Counsel for the applicants/judgment debtors submits that after passing of judgement and decree on 01.02.1988 by High Court, application for execution was filed in the year 2006 i.e. after a period of more than 17 years, therefore, the execution proceedings cannot continue being barred by limitation. In support of her submissions learned counsel for the applicants placed reliance on Article 136 of the Limitation Act as well as on the decision of Supreme Court in the case of Dr. Chranji Lal vs. Hari Das (**2005) 10 SCC 746.**

4. Learned counsel appearing for the respondent 1/decree holder submits that there is no illegality in the impugned order because there is no limitation prescribed under the Limitation Act for filing application for execution of preliminary decree of partition and it is duty of the Court to draw the final decree, which has yet not been drawn, hence no question of limitation arises at present. Learned counsel appearing for the respondent 1 in support of his submissions placed reliance on the decisions of Supreme Court in the case of Kattukandi Edathi Krishnan and another v. Kattukandi Edathil Valsan and others **AIR 2022 SC 2841** and Shub Karan Bubna and others vs. Sita Saran Bubna and others (**2009) 9 SCC 689**.

5. Heard learned counsel for the parties and perused the record.

6. In the present case the rights of the parties were decided finally by the High Court as quoted aforesaid. As such it is clear that both the parties i.e. decree holder and judgment debtors, are having certain share(s) in the agricultural land as well as in the house property and in second appeal it was specifically observed that 'except for the modification aforesaid, the appeal fails and is dismissed. The partition will now be done as directed by the impugned judgment and decree.'

7. Meaning thereby, it was the judgment and decree of trial Court, which was to be executed and not the judgment and decree passed by the High Court and as nobody had challenged the judgment and decree passed by High Court in the second appeal, so it was duty of the trial Court to draw the final decree.

8. In the case of Kattukandi (**supra**) Hon'ble Supreme Court has considered its previous judgment in the case of Shub Karan Bubna and others (**supra**) and held as under:-

> "30. It is clear from the above that a preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. 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 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.
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> 31. Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can

move an application for preparation of a final decree and, any of the defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. [See : Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689; Bimal Kumar and Another v. Shakuntala Debi and Others, (2012) 3 SCC 548]

32. Since there is no limitation for initiating final decree proceedings, the litigants tend to take their own sweet time for initiating final decree proceedings. In some States, the courts after passing a preliminary decree adjourn the suit sine die with liberty to the parties for applying for final decree proceedings like the present case. In some other States, a fresh final decree proceedings have to be initiated under Order XX Rule 18. However, this practice is to be discouraged as there is no point in declaring the rights of the parties in one proceedings and requiring initiation of separate proceedings for quantification and ascertainment of the relief. This will only delay the realization of the fruits of the decree. This Court, in Shub Karan Bubna (supra), had pointed out the defects in the procedure in this regard and suggested for appropriate amendment to the CPC. The discussion of this Court is in paragraphs 23 to 29 which are as under:

> "A suggestion for debate and legislative action
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> 23. The century old civil procedure contemplates judgments, decrees, preliminary decrees and final decrees and execution of decrees. They provide for a "pause" between a decree and execution. A "pause" has also developed by practice between a preliminary decree and a final decree. The "pause" is to enable the defendant to voluntarily comply with the decree or declaration contained in the preliminary decree. The ground reality is that defendants normally do not comply with decrees without the pursuance of an execution. In very few cases the defendants in a partition suit voluntarily divide the property on the passing of a preliminary decree. In very few cases, defendants in money suits pay the decretal amount as per the decrees. Consequently, it is necessary to go to the second stage, that is, levy of execution, or applications for final decree followed by levy of execution in almost all cases.
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> 24. A litigant coming to court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he wants is relief. If it is a suit for money, he wants the money. If it is a suit for property, he wants the property. He naturally wonders why when he files a suit for recovery of money, he should first engage a lawyer and obtain a decree and then again engage a lawyer and execute the decree. Similarly, when he files a suit for partition, he wonders why he has to first secure a preliminary decree, then file an application and obtain a final decree and then file an execution to get the actual relief. The commonsensical query is: why not a continuous process? The litigant is perplexed as to why when a money decree is passed, the court does not fix the date for payment and if it is not paid, proceed with the execution; when a preliminary decree is passed in a partition suit, why the court does not forthwith fix a date for appointment of a Commissioner for division and make a final decree and deliver actual possession of his separated share. Why is it necessary for him to remind the court and approach the court at different stages?

25. Because of the artificial division of suits into preliminary decree proceedings, final decree proceedings and execution proceedings, many trial Judges tend to believe that adjudication of the right being the judicial function, they should concentrate on that part. Consequently, adequate importance is not given to the final decree proceedings and execution proceedings which are considered to be ministerial functions. The focus is on disposing of cases rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on early and easy securement of relief for which the party approaches the court. Even among lawyers, importance is given only to securing of a decree, not securing of relief. Many lawyers handle suits only till preliminary decree is made, then hand it over to their juniors to conduct the final decree proceedings and then give it to their clerks for conducting the execution proceedings.

26. Many a time, a party exhausts his finances and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. As a consequence, we have found cases where a suit is decreed or a preliminary decree is granted within a year or two, the final decree proceeding and execution takes decades for completion. This is an area which contributes to considerable delay and consequential loss of credibility of the civil justice system. Courts and lawyers should give as much importance to final decree proceedings and executions, as they give to the main suits.

27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.

28. We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations/amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief.

29. The present system involving a proceeding for declaration of the right, a separate proceeding for quantification or ascertainment of relief, and another separate proceeding for enforcement of the decree to secure the relief, is outmoded and unsuited for present requirements. If there is a practice of assigning separate numbers for final decree proceedings, that should be avoided. Issuing fresh notices to the defendants at each stage should also be avoided. The Code of Civil Procedure should provide for a continuous and seamless process from the stage of filing of suit to the stage of getting relief."

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter

sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings."

9. In another decision in the case of Venu vs. Ponnusamy Reddiar and another (**2018) 15 SCC 254**, the Hon'ble Supreme Court has held as under :

"7. Similar is the view taken by the Single Bench of High Court of Punjab & Haryana in Naresh Kumar & Anr. v. Smt. Kailash Devi & Ors. [AIR 1999 Punjab and Haryana 102] in which reliance has been placed upon the decision of High Court of Madras in Ramanathan Chetty v. Alagappa Chetty [AIR 1930 Mad. 528] in which it was held that until final decree is passed in a partition suit, limitation will not come into play because the suit continues, till final decree is passed. Reliance is also placed on a decision of High Court of Peshawar in Faqir Chand v. Mohammad Akbar Khan [AIR 1933 Peshawar 101(2)], in which it has been observed that there is no obligation of a litigant to apply for final decree proceedings. As such there is no question of application of the limitation. Another decision of the High Court of Orissa had been referred in Sudarsan Panda v. Laxmidhar Panda [AIR 1983 Orissa 121] in which also similar view had been taken.

8. In the instant case, the other ground which was taken by the appellant with respect to the preliminary decree being worked out by way of compromise. However, the factum of compromises has not been found to be established. Thus there is no satisfaction of the preliminary decree which had been passed in the instant case. The decision in Varatharajulu Reddiar v. Venkatakrishna Reddiar & Ors. [1967 (2) Madras Law Journal 342] is pertinent in this regard, in which it has been observed that in case parties had affected partition by metes and bounds as per the preliminary decree, it would not be necessary to undertake the final decree proceedings but in the instant case, it has not been found to be established that parties have worked out their rights by mutual agreement. Thus the final decree has to be drawn in accordance with law. We appreciate the fairness with which the case has been argued by the learned counsel appearing for the appellant."

10. It is pertinent to mention here that the decision in the case of Dr. Chranji Lal (**supra**) relied upon by learned counsel for the applicants is not applicable to the present case, because in that case question of limitation arose after passing of final decree.

11. In view of the aforesaid legal position, in my considered opinion, learned executing Court does not appear to have committed any illegality in passing the impugned order and in dismissing the application/objection holding the execution application to be within limitation. Resultantly, civil revision fails and is hereby **dismissed**.

12. Interim application(s), if any, shall stand dismissed.

(DWARKA DHISH BANSAL)
JUDGE

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