

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 262 of 2024

Sri Sandip Kumar Saha

Vs.

Somnath Saha & Ors.

For the Petitioner : Mr. S. N. Mitra, Sr. Adv.,
Mr. Partha Pratim Roy,
Mr. Kushal Chatterjee,
Mr. Mohan Lal Banerjee,
Mr. Debrup Choudhury,
Mr. Vidhya Bhushan Upadhyay

For the Opposite Parties : Mr. Saptangsu Basu, Sr. Adv.,
Mr. Aniruddha Chatterjee, Sr. Adv.,
Mr. Krishna Das Poddar,
Mr. Abir Lal Chatterjee,
Mr. Ayon Mitra,
Mrs. Mandira Barman.

Judgment reserved on : 07.01.2026

Judgment delivered on : 09.02.2026

Shampa Dutt (Paul), J.:

1. Title suit No. 1843 of 2005 was before the learned Judge, 11th Bench, City Civil Court at Calcutta, wherein Preliminary Judgment and Decree was passed and subsequently Final Judgment was passed. Petitioner preferred F.A.T 12 of 2022 challenging the final judgment

dated whereby the Hon'ble Division Bench of this Hon'ble Court was pleased to dismiss the said appeal on 25.04.2022, against which a Special Leave to Appeal (C) No(s). 14995 of 2022 being filed, was also dismissed on 24.09.2022 by the Hon'ble Supreme Court.

2. Pursuant to that a Title Execution case No. 58 of 2022 was filed by the decree holders in which an order was passed, fixing date for issuance of writ.
3. Subsequent to the said order, writ of delivery of possession was issued under Order 21 Rule 35 of the Code of Civil Procedure, 1908 and application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 read with Rule 208 of the Civil Rules and Orders registered as Miscellaneous Case being Misc. Case No. 3984 of 2023 was filed.
4. Thereafter an order was passed in the execution case rejecting the recalling application filed by the petitioner herein. Another order was passed rejecting, an application under Section 151 filed by the petitioner for stay of execution. Challenging the said two orders dated 03.01.2024 and 04.01.2024, petitioner has filed the instant revision, praying for non enforcement of decree.
5. The petitioner's case is that prior to passing of the Final Judgment, the partition commissioner had filed two reports, one a 'Final report' and another a 'Further report'.
6. By virtue of the Final report, the partition commissioner had allotted to the petitioner, the entire ground floor i.e. Lot-B, and on the basis of the said allotment, owelty money was assessed, by virtue of which the

petitioner was directed to pay the same to the defendants no. 2 and 3 and to the plaintiffs.

7. **The principle contention of the petitioner** herein is that the petitioner found that the total stamp duty so assessed by the OSD was not paid by the parties to the partition suit and despite the same, erroneously final decree was drawn up in respect of the all the said shares of the parties. It is further states that the learned executing court had also erred in law, in considering that a partition decree cannot be executed without a partition commissioner.
8. Vide the impugned order dated 03.01.2024, the Executing Court's order in respect of the said issue is as follows:-

“The decree holders have filed a photocopy of the certified copy of the final decree along with stamp duty. The decree was stamped and engrossed”.

9. It appears from the order dated 04.01.2024, that the petitioner herein/ judgment Debtor no.1's contention before the executing Court was as follows:-

“The judgment debtor no. 1 submits that the decree dated 20.11.2021 was insufficiently stamped and it was well apparent from the office report. So the instant execution case is not maintainable as the decree was insufficiently stamped. The decree holder should have to pay the stamp duty in respect of all the shares of the suit property including the shares of the judgment debtors. Ld. Commissioner's Report was not marked exhibit. As such, the final decree passed in Title Suit No. 1843 of 2005 is not executable.

Ld. Counsel relies on the provisions of Article 45 of Schedule 1A of the Indian Stamp Act relating to Stamp-duty on instruments in West Bengal.”

10. The executing Court considering the materials on record held:-

“From the case record of Title Suit No. 1843 of 2005, it is crystal clear that the Court asked office to assess the stamp duty for drawing up the final decree. Stamp duty was paid by the Decree holder as per office report and the Court accepted the same.

Section 2 (15) of the Indian Stamp Act states that instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition.

Article 45 of Schedule 1A of the Indian Stamp Act relating to Stamp-duty on Instruments in West Bengal posits that proper stamp duty in respect of Instrument as defined by section 2 (15) is “one-half of one per centum of the market value of the separated share or shares of the property.”

The largest share remaining after the property is partitioned (of if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.

In the final decree all the parties were given equal share to the extent of 1/4th share each and to compensate the Decree holder, the Judgment Debtors were directed to pay the owelty money to the Decree Holder. So the Decree holder paid stamp duty equivalent to one of such equal shares.

*In **Shankar Balwant Lokhande (Dead) versus Chandrakant Shankar Lokhande & Others (supra)** the final decree was made in favour of the first respondent is only partial to the extent of his one sixth right without any demarcation or division of the properties. But in the instant case, final decree was passed and drawn up in respect of all the share-holders to the extent of one fourth share each.”*

11. Once against the petitioner herein has raised the point that no Final decree can be drawn up without the **total stamp duty** being paid in respect of the total property to be partitioned.
12. **In course of hearing, the opposite parties/decreed holders undertake to pay the total stamp duty for drawing up the final decree in respect of the total property to be partitioned.**
13. As of now, admittedly only the plaintiff/decreed holder/opposite parties has paid stamp duty in respect of his declared share in the suit property.
14. In **Kattukandi Edathil Krishnan vs Kattukandi Edathil Valsan, in Civil Appeal No(s). 64066407 of 2010, decided on 13th June, 2022**, the Supreme Court held:-

“29. Before parting, we deem it necessary to address a concerning trend of delay in drawing up the final decrees under Rule 18 of Order XX of the Code of Civil Procedure, 1908 (for short, ‘CPC’). This provision deals with decrees in suits for partition or separate possession of share therein. It provides as under:

“18. Decree in suit for partition of property or separate possession of a share therein. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then, (1) if and in so far

as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties, interested in the property and giving such further directions as may be required." Sub section (2) of Section 2 defines the decree as under:

"(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include —

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

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.

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 Bubna⁹; Bimal Kumar and Another v. Shakuntala Debi and Others¹⁰]*

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 9 (2009) 9 SCC 689 10 (2012) 3 SCC 548 CPC. The discussion of this Court is in paragraphs 23 to 29 which are as under:

“A suggestion for debate and legislative action

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.

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 securing 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.

34. *We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph ‘33’ of this judgment to the concerned Trial Courts in their respective States.”*

- 15. So as per the explanation to Order XX Rule 18 CPC, a decree in such suits may be partly preliminary and partly final.**

16. In the present case, admittedly the decree holder has deposited his share of the stamp duty and as such the final decree to that extent has been put into execution.
17. Before this Court, the plaintiff/decreed holder/opposite parties undertake to pay the stamp duty in respect of the total suit property with liberty to recover the respective shares of the stamp duty from the other co-sharers.
18. The petitioner relies upon the judgment of the Hon'ble Supreme Court in **Shankar Balwant Lokhande (Dead) by Lrs. vs Chandrakant Shankar Lokhande & Anr., reported in (1995) 3 SCC 413**, wherein the Court held:-

*"8. It has been seen that after passing of preliminary decree for partition, the decree cannot be made effective without a final decree. The final decree made in favour of the first respondent is only partial to the extent of his 1/6th right without any demarcation or division of the properties. **Until the rights in the final decree proceedings are worked out qua all and till a final decree in that behalf is made, there is no formal expression of the adjudication conclusively determining the rights of the parties with regard to the properties for partition in terms of the declaration of 1/6th and 5/6th shares of the first respondent and the appellants so as to entitle the party to make an application for execution of the final decree.***

*12. As to Maksudan's case (supra), we state that it had not been correctly decided. Limitation does not begin to run from the date when direction is given to pass final decree. Mere giving of direction to supply stamped paper for passing final decree does not amount to passing a final decree. **Until the final decree determining the rights of the parties by metes and bound is drawn up and engrossed on stamped paper(s) supplied by the parties, there is no executable decree.** In this behalf, it is necessary to note that s.2(a) of the Bombay Stamp Act, 1958, as amended by the local Act, provides*

that a decree of civil. court is required to be stamped as per Article 46 in Schedule-1. Section 34 thereof lays down that "no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped". Therefore, executing court cannot receive the preliminary decree unless final decree is passed as envisaged under Order 20 Rule 18(2). After final decree is passed and a direction is issued to pay stamped papers for engrossing final decree thereon and the same is duly engrossed on stamped paper(s), it becomes executable or becomes an instrument duly stamped. Thus, condition precedent is to draw up a final decree and then to engross it on stamped paper(s) of required value. These two acts together constitute final decree, crystallizing the rights of the parties in terms of the preliminary decree. Till then, there is no executable decree as envisaged in Order 20 Rule 18(2), attracting residuary Article 182 of the old Limitation Act. Contrary views of the High Courts, are not good law. A Division Bench of the Andhra Pradesh High Court in Smt. Kotipalli Mahalakshamma v. K. Ganeswara Rao, AIR 1960 AP 54, correctly decided the question of law which held that the limitation begins to run only after a final decree is engrossed on stamped papers."

19. Thus relying upon the judgments in **Shankar Balwant Lokhande (supra)** and **Kattukandi Edathi (supra)** the revisional application is disposed of with the liberty granted to the decree holder, to pay the total stamp duty of the total property to be partitioned, to make the final decree executable and with liberty to recover the same from the other co-sharers, by due process of law.
20. **On payment of the same, the executing Court shall put the decree into execution and ensure its full satisfaction within one month, thereafter.**

- 21. CO 262 of 2024 stands disposed of.**
- 22.** Connected application, if any, stands disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Urgent Photostat certified copy of this Judgment, if applied for, be given to the learned counsel for the parties on usual undertakings.

(Shampa Dutt (Paul), J.)