

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.107 of 2024

1. Krishna Ram S/o Late Mahadeo Dusadh Resident of village- Khambhe, P.S.- Mali, District- Aurangabad.
2. Surajmal Dusadh @ Surajmal Paswan, S/o late Bakhora Dusadh Resident of village- Khambhe, P.S.- Mali, District- Aurangabad.

... .. Petitioner/s

Versus

1. Pramod Dusadh Son of Late Bigan Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
2. Binod Dusadh, Son of Late Bigan Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
3. Guddu Dusadh, Son of Late Bigan Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
4. Manoj Dusadh, Son of Late Bigan Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
5. Tetri Devi, D/o Late Bigan Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
6. Most. Shyamapati Devi, W/o Late Jugal Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
7. Pradhuman Dusadh, S/o Late Jugal Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
8. Naresh Dusadh, Son of Late Sasti Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
9. Awadhesh Dushadh, Son of Late Sasti Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
10. Pravesh Dusadh, Son of Late Sasti Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
11. Bijendra Dusadh, Son of Late Bakhora Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
12. Dharendra Dusadh, Son of Late Bakhora Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
13. Nagendra Dusadh, Son of Late Bakhora Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.
14. Most. Chandrakanti Kuer, W/o Late Bakhora Dusadh Resident of village - Khambha, P.O.- Sonapura, P.S.- Mali, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lakmesh Marvind, Adv.
For the Respondent/s : Mr.



CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT

Date : 13-01-2026

The present Civil Misc. Application has been preferred against the order dated 12.12.2023, passed in Title Suit No. 103 of 1952 by learned Munsif, Aurangabad whereby the learned Court was pleased to reject the petition dated 23.11.2023 filed by the plaintiffs/deGREE holder for setting aside the earlier Survey Knowing Pleader Commissions report dated 19.11.1957 and for an order for the appointment of new Survey Knowing Pleader Commissioner for carving out Takhta in the light of judgment and order of the court with a provision for the sold land.

2. Learned counsel for the petitioners submits that Title Partition Suit No. 103 of 1952 was instituted by the plaintiff's ancestor, which, after contest, was decided by judgment dated 20.01.1954, followed by preparation of a preliminary decree on 02.02.1954. For carving out



the shares in terms of the preliminary decree, a survey-knowing Pleader Commissioner was appointed, who submitted his report on 19.11.1957. Objections were invited from both parties but no objection was filed, whereafter the report was confirmed. It is further submitted that the order of confirmation dated 04.01.1958 does not bear the seal and signature of the Presiding Officer. Subsequently, on 06.04.2010, the petitioners filed an application for preparation of the final decree along with a prayer for condonation of delay, which was rejected by the trial court vide order dated 13.05.2010. Aggrieved thereby, CWJC No. 10032 of 2010 was filed before this Court, wherein the Hon'ble Court, in paragraphs 5 and 6, held as follows:-

“5. In the case in hand, I find that Survey Knowing Pleader Commissioner submitted its report on 23.11.1957 and the court below confirmed the said report on 04.01.1958 as no objection was filed. The court below disposed of the suit on 08.09.1958 with a direction to draw final decree on filing the necessary stamp and



deposit of balance of commissioner's fee.

6. In view of above discussion and proposition of law, the impugned order passed by the court below is set aside and the matter is remitted to the court below to consider the matter afresh as regards preparation of final decree.”

Learned counsel for the petitioners also placed reliance on judgments passed by Hon'ble supreme court the case of :-

1. Prasanta Kumar Sahoo & others vs. Charulata Sahu & others, reported in **(2023) 9 SCC 641**, where it is held in para 74.3 :-

“74.3 – Under the Mitakshara School of Hindu law, a member of a joint Hindu family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. Thus, the institution if a suit for partition by a member of a joint family is a clear intimation of his intention to separate, and there was consequential severance of a status of jointness. Question before this Court in *Vineeta*



Sharma was: in case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any legislative amendment or any subsequent event takes place which results in enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be into consideration and given effect to while passing final decree in the partition suit. The court held that even though filing of partition suit brings about severance of status of jointness, such legislative amendment or subsequent event will have to be taken into consideration and given effect to in passing the final decree in the partition suit. This is because, the partition suit can be regarded as fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu family takes place by metes and bounds. The court observed in para 107 as under:

“107. Once the constitution of coparcenary changes by birth or



death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and changes due to the subsequent event can be taken into consideration

(emphasis supplied)

2. Venu vs. Ponnusamy Reddair

(Dead) through legal representatives and another, reported in **(2018) 15 SCC 254,** where it is held in para 3:-



“3. In our opinion a preliminary decree for partition crystallises the rights of parties for seeking partition to the extent declared, the equities remain to be worked out in final decree proceedings. Till partition is carried out and final decree is passed, there is no question of any limitation running against right to claim partition as per preliminary decree. Even when application is Filed seeking appointment of Commissioner, no limitation is prescribed for this purpose, as such, it would not be barred by limitation, lis continues till preliminary decree culminates into final decree.”

All the aforesaid authorities are not applicable to the present case, as the final decree could not be drawn for more than fifty years solely due to the fault and inaction of the parties, despite repeated efforts made by the Court.

3. After going through the above findings of Hon’ble Court in this particular case, it clearly transpires that the direction has been given to the court below to



draw final decree on filing necessary stamp and deposit of balance of commissioner's fee and thereafter the Impugned Order dated 13.05.2010 was set aside and case was remitted to court below to consider the matter afresh as regards preparation of final decree. The petitioners submit that after passing the judgment in the year 1954 till date, so many transactions have been made by the parties with respect to the suit property. That sale deed has got no relevancy at present because the preliminary decree has not been challenged in the case and the final decree is to be prepared on the basis of preliminary decree and as per share allotted to the parties and not in accordance with the sale deed executed by any party. If the petitioners have any such grievance that any party has executed sale deed exceeds his share, he will have an opportunity to file fresh suit. The suit has already attained finality and there remains no scope for any further interference with the judgment and decree, particularly in view of the detailed consideration of all



relevant facts by the Hon'ble Court in its earlier judgment dated 24.08.2018, passed in CWJC No. 10032 of 2010.

4. Keeping in view the aforesaid facts, the petition is devoid of merit. Hence, it stands rejected.

5. Accordingly the instant Civil Misc. No. 107 of 2024 stands dismissed.

(S. B. Pd. Singh, J)

Nirajkr/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.01.2026
Transmission Date	NA

