

[2026 LiveLaw \(SC\) 513](#)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**K.V. VISWANATHAN; J., S.V.N. BHATTI; J.**

SPECIAL LEAVE PETITION (CIVIL) NOS. 8716-8717 OF 2026; May 18, 2026

**JENNIFER MESSIAS versus LEONARD G LOBO**

**Code of Civil Procedure, 1908 (CPC) – Section 2(2), Order XX Rule 18 – Partition Suit – Executability of Decree – Execution of Preliminary Decree without drawing a formal Final Decree – Distinction between Preliminary and Final Decree - The Supreme Court observed that the fundamental error in the High Court’s appreciation was that it proceeded solely on the nomenclature assigned to the Decree - A decree can be both preliminary and final, or partly preliminary and partly final - Where a decree determines the entitlement or right to possession, fixes mesne profits, and provides a specific alternate mechanism (such as sale/auction) if physical division by metes and bounds is reported to be impossible, the direction to file a fresh application for a separate final decree is completely unwarranted - Supreme Court emphasized that once a preliminary decree is passed, the trial court should proceed for drawing up the final decree *suo motu* and there is no need to file a separate final decree proceeding - where the Advocate Commissioner reported that the small flat was unavailable for division by metes and bounds, the executing court was well within its jurisdiction to proceed with the bidding process and auction of the subject matter - High Court's order setting aside the execution proceedings on the rigid technicality that a final decree was a sine qua non for execution was **set aside**. [Relied on *Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande*, (1995) 3 SCC 413; *Bimal Kumar v. Shakuntala Debi*, (2012) 3 SCC 548 (Paragraph 13); *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*, (2022) 16 SCC 7; Paras 14 - 17]**

*For Petitioner(s) Mr. Abhishek Gulatee, AOR (through VC) Mr. Naveen Chaturvedi, Adv.*

*For Respondent(s) Mr. Siddharth R.Gupta, Adv. Mr. Mrigank Prabhakar, AOR Mr. Pramod Thakre, Adv. Mr. Rahul Rawat, Adv. Mr. Shantanu Sharma, Adv. Ms. Surbhi Saxena, Adv. Mr. Uddaish Palya, Adv. Ms. Astha Singh, Adv. Mr. Aman Agarwal, Adv.*

**J U D G M E N T**

**S.V.N. BHATTI, J.**

1. Leave granted.
2. The Civil Appeals arise from Orders dated 27.07.2023 in Miscellaneous Petition No. 2005 of 2022 and 20.03.2025 in the Review Petition No. 947 of 2023, in the High Court of Madhya Pradesh at Jabalpur. The impugned Orders, in effect, have set aside the Execution Proceedings pending before the II<sup>nd</sup> Additional Judge, Jabalpur, in Civil Suit No. 7A/2011. The outcome of the adjudication appears simple, but the Civil Appeals exemplify the Comedy of

Errors.<sup>1</sup> The polemic, which is the subject of the final adjudication, is whether the Decree dated 13.04.2012 is a Preliminary or a Final Decree in itself, and whether the same could be put to Execution. The narrative sounds interesting to the fraternity. Still, the ordeal the Appellant is undergoing reminds us of the oft-quoted expression that “*the difficulties of a litigant in India begin when he has obtained a decree*”.

3. Jennifer/Appellant and Peter Messias were married in 1980. In 1991, the couple purchased Flat No. 101, Amba Apartment, Civil Line, Jabalpur, also referred to as 101-A in the Advocate Commissioner’s Report (“Subject Matter”) from their combined income. The couple was judicially separated in 2003, which this Court confirmed in 2004. Peter Messias was stated to have possession of the Subject Matter purchased by the couple. On 26.03.2014, Peter Messias died. Leonard G. Lobo/the Respondent, claims to be representing the interests of the deceased Peter Messias on the basis of a registered Will dated 22.03.2014. In the Civil Appeals, we are not examining the relationship or proximity of the respondent to the deceased Peter Messias. The Respondent has remained in possession of the Subject Matter of the Appeals by claiming through the late Peter Messias.

4. Appellant filed Civil Suit No. 7A/2011 for partition and separate possession of the Subject Matter. On 13.04.2012, the Trial Court passed a Preliminary Decree. The clauses relevant in the Preliminary Decree are excerpted:

*“(A) It is declared that the plaintiff is entitled to partition of the suit property Flat no. 101, Amba Apartment, Civil Lines, Jabalpur and obtain possession of her one-half share.*

*(B) The plaintiff is entitled to receive mesne profits of Rs. 1500/- per month in lieu of rent for her share of the suit property from the date of filing the suit till the date of taking possession of her one-half share.*

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2. *And it is further ordered and decreed be and is hereby appointed as Commissioner to make partition of the said property according to the shares given above.*

3. *That if the said Commissioner finds that partition cannot be made equal between the parties according their respective rights without prejudice to the rights and interest of some of them he shall report the amount of compensation to be made by the parties for quality of partition.”*

5. The Appellant, as part of an intentional or unintentional comedy of errors, filed an Execution Application to execute the Decree dated 13.04.2012 in Civil Suit No. 7A/2011. On 07.08.2013, the Execution Petition was dismissed. The Appellant was prompted to file an application under Order XX Rule 18 of the Code of Civil Procedure, 1908 (“CPC”), numbered Execution No. EX-A-1600007/14. Peter Messias died on 26.03.2014. On 15.07.2015, the Respondent was brought on record as the legal representative of the deceased Peter Messias in the Execution Petition. On 13.05.2016, the High Court dismissed Civil Revision No. 47 of 2016, challenging the Respondent’s impleadment. While dismissing the Revision, it was directed that the Appellant’s

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<sup>1</sup> An event or series of events made ridiculous by the number of errors that were made throughout. (Merriam Webster Dictionary)

application under Order XX Rule 18 of the CPC be treated as an Interlocutory Application within the pending civil suit, rather than a separate Execution Proceeding. In terms of the said condition, the Execution Court appointed the Advocate Commissioner, and the Advocate Commissioner's Report, dated 17.04.2019, stated that the Subject Matter, a small portion described as a flat, is not available for division by metes and bounds. The Executing Court, vide Order dated 05.07.2019, directed the public auction of the Subject Matter in terms of the condition to the Decree dated 13.04.2012. The Respondent again moved the High Court in Miscellaneous Petition No. 4893 of 2019, complaining about the steps taken by the court in relation to the sale of the Subject Matter and the apportionment of the sale consideration in terms of the Decree dated 13.04.2012. On 24.09.2019, the High Court again interfered with the steps initiated by the Appellant on 26.03.2014. The operative portion reads thus:

*"The Court on receiving the report of Commissioner can pass order for sale of property and distribution of proceeds. Civil Court can also issue further directions under Order 20 Rule 18 of CPC as the Rule stipulates further directions may be issued. This Court in C.R.No.47/2016 has passed the order that application under Order 20 Rule 18 of CPC is to be treated as an interlocutory application in pending civil suit and proceed with the same. Since the report of Commissioner is received, therefore, Court ought to have pass a final decree in the civil suit and thereafter, property ought to have been put to auction. In this case, Executing Court is proceeded ahead for execution of preliminary decree, which is not permissible in law.*

*Therefore, the impugned order dated 05.07.2019 is set-aside, it is directed to the XV Additional District Judge, Fast-Track Court, Jabalpur to proceed on the report of Commissioner in Civil Suit No.7-A/2011 and pass order considering the report of Commissioner as per the provisions under Order 26 Rule 14 of CPC and further pass orders as per Order 20 Rule 18 (2) of CPC and to draw a final decree, which will be executed by the Executing Court."*

6. To comply with partition laws and to allow pre-emptive rights, the Executing Court initiated a bidding process between the parties. The Respondent offered Rs. 12,81,181/- for the Appellant's share. Subsequently, the Appellant submitted a higher sealed bid of Rs. 13,60,000/- for the purchase of the Respondent's share. Before the bidding process could be finalised, the Respondent again filed a Miscellaneous Petition No. 2005 of 2022, praying for a direction to restrain the Executing Court from proceeding with the Execution in Case No. EX-A-1600007/14. Through the impugned Order, the High Court interdicted the Execution Proceedings and left open for consideration of remedies available to the Appellant as follows:

*"19. Therefore, the proceedings which have been initiated by the Executing Court if are subjected to scrutiny while keeping in view the provisions of Code of Civil Procedure as stipulated in Section 2(2) CPC as well as Order 20 Rule 18 of CPC and also the pronouncement made by the Apex Court in the aforesaid decision, the trial Court even could not have received the preliminary decree for the purposes of the execution thereof. The existence of a final decree is sine qua non for execution. A preliminary decree cannot be executed directly and in terms of the law laid down by the Apex Court in the case of **Hameed Joharan (supra)**, the Executing Court even cannot receive the preliminary decree.*

*20. Therefore, the execution proceedings pending before the Court of 2<sup>nd</sup> Additional District Judge, Jabalpur are set aside. The decree holder is at liberty to approach the trial Court by way of an application for grant of final decree in terms of preliminary decree dated 13.04.2012 (Annexure P/1), such an application if moved in terms of this order by the plaintiff/decree holder the same shall be dealt with by the trial Court in accordance with law."*

7. The Appellant filed a Review Petition, which was dismissed vide order dated 20.03.2025. Hence, the Civil Appeals at the instance of the Plaintiff/Decree Holder.

8. Advocate Abhishek Gulatee for the Appellant argues that the Orders dated 27.07.2023 and 20.03.2025 fail to appreciate the earlier Orders of the Executing Court dated 05.07.2019 and the High Court dated 24.09.2019. The fundamental error in the High Court's appreciation is that it proceeds on the nomenclature assigned to the Decree dated 13.04.2012. The Appellant filed an Execution Application at the 1<sup>st</sup> instance, which was dismissed on 07.08.2013. The Appellant then filed an Application under Order XX Rule 18 of the CPC, registered as EX-A-1600007/14. Order XX Rule 18 of the CPC speaks of the passing of a Final Decree in a Suit for Partition. The Court Commissioner, given the extent available for Partition and the attendant circumstances of the Report, stated that the Subject Matter cannot be partitioned by metes and bounds. The Executing Court rightly ordered the public auction of the Subject Matter, and there have been bids and counterbids from both the Appellant and the Respondent. The High Court also interdicted the Execution Proceedings, and a direction has now been issued to file an application for a Final Decree. It is urged that, in view of the Advocate Commissioner's Report dated 17.04.2019, the Subject Matter is unavailable for partition by metes and bounds through a Final Decree. Therefore, the Preliminary Decree itself is final; the auction of the Subject Matter is the only solution; and directing the filing of an Application under Order XX, Rule 18 (2) of the CPC is not even procedural but a purely academic pursuit.

9. Advocate Siddharth R. Gupta for the Respondent argues that the Decree dated 13.04.2012 is a pure and simple Preliminary Decree. In law, a Preliminary Decree is not executed, as it merely determines the rights to which the parties are entitled. The Executable Decree becomes available upon the passing of the Final Decree. In law, there is a clear distinction between a Preliminary Decree and a Final Decree. No Exception could be taken to the impugned Orders. To sum up, it is urged that Execution Proceedings are not maintainable; the previous Orders have attained finality; the determining factor for initiating Execution Proceedings is whether the Decree is Preliminary or Final; the High Court acted well within its jurisdiction; and the Appellant is not entitled to any mesne profits because the delay is attributable to the Appellant.

10. We have taken note of the submissions and perused the record.

11. Section 2(2) of the CPC defines a "decree" and reads as follows:

*"(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;”*

**12.** Under Order XX Rule 12 of the CPC, a court may pass a Decree for possession and/or mesne profits, and under Order XX Rule 18 of the CPC, the court may pass a Decree in suit for partition of property or for separate possession. The said Rules provide as follows:

### Order XX Rule 12 of the CPC

*“12. Decree for possession and mesne profits.—(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree— (a) for the possession of the property;*

*[(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.*

*(ba) for the mesne profits or directing an inquiry as to such mesne profits;]*

*(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—*

*(i) the delivery of possession to the decree-holder,*

*(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or (iii) the expiration of three years from the date of the decree, whichever, event first occurs.*

*(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.”*

### Order XX Rule 18 of the CPC

*“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 rights of the several parties interested in the property and giving such further directions as may be required.”*

Accordingly, all the steps have been complied with.

**13.** The Object, purpose and scope of the Preliminary Decree and a Final Decree have been explained in a catena of decisions, and we are not purposing to burden the Judgment with precedents when the position of the law is well established, but we refer to *Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande*<sup>2</sup> and *Bimal Kumar v. Shakuntala Debi*<sup>3</sup>, stating the following:

### Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande (supra)

*“3. xxx Section 2(2) of CPC defines ‘decree’ to mean “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”. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual*

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<sup>2</sup> (1995) 3 SCC 413

<sup>3</sup> (2012) 3 SCC 548

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 fully determined and a decree is passed in accordance with such determination which is final. Both the decrees are in the same suit. Final decree may be said to become final in two ways: (i) when the time for appeal has expired without any appeal being filed against the preliminary decree or the matter has been decided by the highest Court; (ii) when, as regards the court passing the decree, the same stands completely disposed of. It is in the latter sense the word 'decree' is used in Section 2(2) of CPC. The appealability of the decree will, therefore, not affect its character as a final decree. The final decree merely carries into fulfilment the preliminary decree.

4. Order 20, Rule 18 envisages passing of a decree for partition of property or for separate possession of a share therein. Sub-rule (2) is material which provides that "if and insofar as such decree relates to any other immovable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required". (emphasis ours) Thus, it could be seen that where the decree relates to any immovable property and the partition or separation cannot be conveniently made without further inquiry, then the court is required to pass a preliminary decree declaring the rights of several parties interested in the property. The court is also empowered to give such further directions as may be required in this behalf. A preliminary decree in a partition action, is a step in the suit which continues until the final decree is passed. In a suit for partition by a coparcener or co-sharer, the court should not give a decree only for the plaintiff's share, it should consider shares of all the heirs after making them parties and then pass a preliminary decree. The words "declaring the rights of the several parties interested in the property" in sub-rule (2) would indicate that shares of the parties, other than the plaintiff(s), have to be taken into account while passing a preliminary decree. Therefore, preliminary decree for partition is only a declaration of the rights of the parties and the shares they have in the joint family or coparcenary property, which is the subject-matter of the suit. The final decree should specify the division by metes and bounds and it needs to be engrossed on stamped paper."

### Bimal Kumar v. Shakuntala Debi (supra)

"25. In the said case, after referring to Civil Procedure Code by Mulla, this Court in Renu Devi case [(2003) 10 SCC 200 : AIR 2003 SC 1608], while drawing a distinction between the preliminary and the final decree, has stated 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. 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.

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**32. It is well settled in law that a preliminary decree declares the rights and liabilities, but in a given case, a decree may be both preliminary and final and that apart, a decree may be partly preliminary and partly final. It has been so held in Rachakonda Venkat Rao v. R. Satya Bai [(2003) 7 SCC 452 : AIR 2003 SC 3322]. It is worth noting that what is executable is a final decree and not a preliminary decree unless and until the final decree is a part of the preliminary decree. That apart, a final decree proceeding may be initiated at any point of time. It has been so enunciated in Hasham Abbas Sayyad v. Usman Abbas Sayyad [(2007) 2 SCC 355]."**

*(Emphasis supplied)*

14. Therefore, the crux of the consideration is whether the Decree dated 13.04.2012 is a simple Preliminary Decree, or whether the Trial Court, in its

wisdom, has made it both a Preliminary and a Final Decree. This is determined not by Authorities but by the very Decree.

15. The Decree dated 13.04.2012 has the following facets: -

**A.** The Appellant and Peter Messias are entitled to a half share each in the Subject Matter.

**B.** The Appellant is entitled to the possession of the Subject Matter.

**C.** The Appellant is kept out of possession; therefore, fixed mesne profits of Rs. 1500/- are directed to be paid till the date of taking possession of the half share.

**D.** The Advocate Commissioner is directed to work out the division by metes and bounds, and in default, the Subject Matter is sold, and the sale consideration is divided between the parties.

16. We take note of the Trial Court's foresight in incorporating a condition for the appointment of an Advocate Commissioner and the course to be followed if a Final Decree by metes and bounds could not be passed. The Appellant moved an Execution Petition in the first instance, which was dismissed on 07.08.2013. The Appellant then moved an Application under Order XX Rule 18 of the CPC for the passing of a Final Decree. The Advocate Commissioner reported to the Court that the physical division of the Subject Matter by metes and bounds is not possible. This led to a direction to initiate bidding on the Subject Matter between the parties. The Respondent participated and again filed Miscellaneous Petition No. 2005 of 2022 in the High Court to restrain the Executing Court from proceeding further with the matter. This argument was accepted by the High Court, with reference to the Judgment of this Court in *Kattukandi Edathil Krishnan*.<sup>4</sup> We would have appreciated it if the High Court had juxtaposed the Decree and determined whether the executable portion thereof is being executed. The High Court has proceeded by the nomenclature of the Decree without appreciating that, in certain circumstances, an Order made under Sections 2 to 4 of the Partition Act is also a deemed Decree within the meaning of Section 2(2) of the CPC. The judgments relied on by the High Court are distinguishable and apt in the circumstances considered in those precedents. The very judgment relied on by the High Court observes that there is no need to file an Application under Order 20 Rule 18 of the CPC seeking a Final Decree.<sup>5</sup> Still, the Appellant is called to file an application. This is another

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<sup>4</sup> *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*, (2022) 16 SCC 71.

<sup>5</sup> *Kattukandi Edathil Krishnan (supra)*

*"35. 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 20 Rule 18CPC. 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 party concerned 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 20 Rule 18CPC soon after passing of the preliminary decree for*

error or Comedy of Errors. The Orders impugned do not refer to the clauses in the Decree. The conclusion reached by the High Court is that, before putting the same to Execution, a Final Decree is necessary. The Decree dated 13.04.2012, for all purposes, determined the entitlement or right to possession, mesne profits, and the first option regarding the mode and manner of working out the shares, in the event of default in the sale of the Subject Matter. The direction to file a fresh application after the passing of a Final Decree is completely unwanted. In the facts and circumstances of this case, for the ends of justice to be met, the Decree should be construed as indicated above. The termination of Execution Proceedings No. EX-A-1600007/14 amounts to an illegal exercise of jurisdiction and is set aside.

**17.** We take note that the Advocate Commissioner's Report dated 17.04.2019 states that the Subject Matter cannot be partitioned by metes and bounds, and that the Trial Court was well within its jurisdiction in proceeding with the bidding of the Subject Matter and apportioning half of the sale consideration between the parties. However, because of the Order of the High Court, the same could not be proceeded with. Hence, we restore the Execution Case No. EX-A-1600007/14 to file, and the Court is directed to entrust the warrant to the same Advocate Commissioner who filed the Report dated 17.04.2019, and if not possible, appoint another Advocate Commissioner for conducting the auction and apportioning the same between the parties. While apportioning, the Trial Court takes into account the condition of the mesne profits and disburses the balance to the Respondent. The parties are permitted to bid along with other participants in the course of the sale of the Subject Matter. We take note that the Appellant is a septuagenarian and direct the Trial Court to complete the proceedings within 2 months of receiving this Order. The Registry of this Court is directed to communicate the Order forthwith.

**18.** Consequently, the Civil Appeals are allowed. No order as to costs. Pending application(s), if any, stand disposed of accordingly.

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