

CIRCULAR

The Hon'ble Supreme Court of India in ***Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others, (2009) 3 SCC 689***, while considering the concept of final decree in a partition suit, has held that it is different from an application for a final decree in mortgage suit and has mandated that after passing of a preliminary decree in a suit for partition, the proceedings should be continued by the Trial Court till final decree is passed. The relevant observations and directions issued in the said ruling are extracted as follows:

“18.3. As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until partition, that is, division by metes and bounds takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of the Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.”

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“20. On the other hand, in a partition suit the preliminary decrees only decide a part of the suit and therefore an application for passing a final decree is only an application in a pending suit, seeking further progress. In partition suits, there can be a preliminary

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decree followed by a final decree, or there can be a decree which is a combination of preliminary decree and final decree or there can be merely a single decree with certain further steps to be taken by the court. In fact, several applications for final decree are permissible in a partition suit. A decree in a partition suit enures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree.

21. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. That part of the prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings. Thus the application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds.

22. Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit. Consequently an application for a final decree in a mortgage suit is different from an application for final decree in partition suits.”

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“31. Insofar as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the

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duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution.”

Further, the Hon’ble Supreme Court of India in ***Kattukandi Edathi Krishnan and Another Vs. Kattukandi Edathil Valsan and Others, 2022 SCC OnLine SC 737***, while reiterating the observations made in the earlier ruling in *Shub Karan Bubna (cited supra)*, has laid down as follows:

“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 Court in their respective States.”

Hence, as directed by the Hon’ble Supreme Court of India in the aforesaid two rulings (*cited supra*) once a preliminary

decree is passed by the Trial Court, the Court should proceed with the case for drawing final decree *suo motu* and that there is no need to file a separate final decree proceedings. Further, the Trial Courts are also directed 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. Accordingly, all the Trial Courts shall scrupulously follow the above directions in letter and spirit. Any lapses in this regard, will be viewed seriously.

BY ORDER OF HON'BLE THE CHIEF JUSTICE

Sd/-

**(K.S.BHARATH KUMAR)
REGISTRAR GENERAL**

To:

1. The P.A. to Hon'ble The Chief Justice
2. The Registrar General/ Registrar (Vigilance)/ Registrar (Recruitment) / Registrar (Administration)/ Registrar (Infra & Maintenance) / Registrar (Protocol & Hospitality) / Registrar (Computers).
3. The Additional Registrar General/ Additional Registrar (Judicial), High Court of Karnataka at Dharwad and Kalaburagi Benches, for information.
4. The Central Project Co-ordinator (CPC), with a request to web-host the circular.
5. The Director, Karnataka Judicial Academy, Bengaluru.
6. The Assistant Registrar and Section Officer of DJA-I to circulate the circular to all the Trial Courts through the respective Principal District and Sessions Judges and Unit Heads.
7. Office Copy.