



2026:AHC:105086

Reserved on 23.04.2026  
Delivered on 07.05.2026

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**MATTERS UNDER ARTICLE 227 No. - 6472 of 2023**

Kamlesh Singh

.....Petitioner(s)

Versus

Pushpendra Singh Kama and 17 others

.....Respondent(s)

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Counsel for Petitioner(s)	: Atul Kumar Srivastava, Ramendra Asthana, Shreyas Srivastava
Counsel for Respondent(s)	: Abhijit Mishra, Abhishek Kumar, Akhilesh Tripathi, Kalpana Sinha

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**IN CHAMBER**

**HON'BLE KSHITIJ SHAILENDRA, J.**

**ISSUE INVOLVED: ENGROSSMENT OF FINAL DECREE OF PARTITION ON STAMP PAPERS: CONCEPT, APPLICABILITY AND LIMITATION**

1. Heard Shri Shreyas Srivastava, learned counsel for the petitioner and Shri Abhishek Kumar, learned counsel for the contesting respondents.
2. This petition under Article 227 of the Constitution of India raises challenge to an order dated 05.05.2023, whereby the learned Additional District and Sessions Judge, Court No. 1, Mainpuri, (A.D.J.) has allowed an application filed by the respondents seeking engrossment of a final decree dated 23.04.1984 on non-judicial stamp papers.

**BRIEF FACTS**

3. In a suit for partition, being O.S. No. 68 of 1972, parties entered into a compromise and, based thereupon, a preliminary decree was drawn on 16.07.1980. Thereafter, the plaintiff and defendant no. 1 applied for preparation of joint Kurra and paid requisite court fees. Final decree was drawn on 23.04.1984 wherein the share of plaintiff and defendant no. 1 was determined as 11/24 and collective share of remaining defendants No. 2 and 4 to 9 was determined as 13/24.

4. Pursuant to an application filed by some of the defendants other than the defendant no. 1, the order impugned dated 05.05.2023 was passed permitting engrossment of final decree on non-judicial stamp papers.

**SUBMISSIONS ON BEHALF OF THE PETITIONER**

5. Learned counsel for the petitioner has advanced following submissions:-

(i) The final decree was drawn only in relation to plaintiff and defendant no. 1, no decree was drawn in favour of remaining defendants and, therefore, they had no right to get engrossment of the decree on stamp papers.

(ii) The First Appeal No. 407 of 1982 filed by the remaining defendants challenging the final decree was dismissed by this Court on merits by order dated 14.12.2012 and, therefore, non-declaration of their shares attained finality, however, the said aspect has been ignored by the learned A.D.J.

(iii) A Commissioner was appointed by the trial court and, in terms of Order XXVI Rule 14 CPC, a report was prepared by him proposing a partition scheme wherein only two kurras had been carved out, first, pink kurra (wrongly mentioned as red colour in first appellate court's judgment) belonging to the plaintiff and the

defendant no. 1 and, second, green kurra (jointly co-owned) belonging to remaining non-desirous defendants no. 2 and 4 to 9 and once the final decree was drawn solely and explicitly in favour of the plaintiff and defendant no. 1, the same has to be read as it is and, therefore, permitting engrossment of the said decree at the instance of third parties, was not permissible.

(iv) There was no mention of the joint green kurra of other non-desirous defendants in the decree and this Court, while dismissing the first appeal, had considered specific objections of the defendants no. 6 to 9 under issue/point No. 1 holding that there is no principle in law that there could be only one final decree of partition amongst co-sharers, rather there may be more than one final decree depending upon the facts and circumstances of each case.

(v) It is indicated in the Commissioner's report that only plaintiff and defendant no. 1 had demanded partition and paid requisite court fees and, therefore, the other lot of remaining 13/24 share was to be demarcated, prepared and left out for non-desirous co-owners, i.e. defendants no. 2 and 4 to 9.

(vi) The indication made in the final decree that the same had been '*made final in terms of the Commissioner's report (11-Ga) and was made part of the said decree*', would be read only in relation to plaintiff and defendant no. 1 qua their kurras of pink colour and not beyond that.

(vii) The remaining part of the Commissioner's report pertaining to green kurra only reported the 'proposed partition scheme' which is yet to be endorsed and converted into final decree.

(viii) The trial court had varied the Commissioner's report under Order XXVI Rule 14 (3) CPC by only handing over the pink kurra to the original plaintiff and defendant no. 1 and no other share to any other person.

(ix) Execution application filed by the non-desirous defendants seeking execution of the final decree, was not maintainable as the execution applicants are not the decree holders.

(x) The execution application was barred by limitation under Article 136 of the Schedule contained in the Limitation Act, 1963 and, as no specific period of limitation is prescribed for an application seeking engrossment of a decree on non-judicial stamp papers, Article 137 would apply to such applications and once the application was filed after seven years from the date of final decree, the same was barred by limitation.

(xi) Article 136 of the Schedule would not apply in relation to the application since the starting point of limitation is the date when the decree becomes enforceable, i.e. on the date of its passing.

(xii) The case of the contesting respondents is still at stage one, i.e. the stage of preliminary decree, as there is no final decree in their favour.

(xiii) Mere passing of a decree does not render it executable straightaway and in case of partition decree, it has to be engrossed on a non-judicial stamp paper as required under Section 29(g) read with Section 3(a) of the Indian Stamp Act, 1899 ('Stamp Act') to make it executable.

(xiv) The act of getting a final decree engrossed is an independent act solely in the control of the decree holder and the requirement of engrossment flows/arises from

the Stamp Act and is not in continuation of the adjudicatory process in the partition suit.

(xv) Though engrossment is a pre-requisite for getting a decree executable, the same arises on account of distinct cause of action, i.e. for crystallizing and granting recognition to the rights, as determined.

(xvi) Though the learned A.D.J. passed an order dated 23.04.1981 that a separate misc. case be registered, the same was never filed by the non-desirous defendants and even the liberty granted by the High Court in the judgment dismissing the First Appeal No. 407 of 1982 whereby it was left open to the appellants (non-desirous defendants) to pursue their applications for separation of their kurras, was not availed by them.

6. In support of his submissions, he has placed reliance on **Shankar Balwant Lokhande (Dead) by LR's Vs. Chandrakant Shankar Lokhande: (1995) 3 SCC 413; Hameed Joharan (D) and others Vs. Abdul Salam (D) by L.R's and others: (2001) 7 SCC 573; Chiranji Lal (D) by L.R's Vs. Hari Das (D) by L.R's: (2005) 10 SCC 746; and The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma: (1976) 4 SCC 634.**

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

7. Per contra, learned counsel for the respondents has advanced following submissions:-

(i) Once the final decree dated 23.04.1982 indicates that the decree be made final in terms of the Commissioner's report (11-Ga), which shall form part of the decree and, in the said report, shares of other defendants were also declared vide paragraphs no. 6 to 27 and 30, it cannot be said that the decree was drawn only in favour of plaintiff and defendant no. 1 to the exclusion of remaining defendants.

(ii) The engrossment of a decree on non-judicial stamp papers, being in furtherance of the decree and forming part of its executability, limitation would be 12 years as per Article 136 of the Schedule contained in the Limitation Act and since the decree was drawn in the year 2012, limitation would be available till 2024 and, therefore, the application having been moved in 2019 was well within the period of limitation.

(iii) Non-payment of court fees by the defendants other than plaintiff and defendant no. 1, cannot be fatal to the claim of the respondents as they can always pay court fees upto final stage of execution as and when an order to that effect is passed by the Executing Court and, therefore, mere indication in Commissioner's report that only plaintiff and defendant no. 1 had paid court fees, would not mean that the remaining defendants have lost their claim under the decree.

(iv) The liberty granted under the order passed by this Court in First Appeal, was availed in terms of filing of Misc. Case No. 41 of 2019 whereby prayer to draw final decree and its engrossment on stamp papers was made after depositing the stamp according to their share and, therefore, all the requirements, either factual or legal, stood fulfilled.

8. In support of his submissions, he has placed reliance on **Gajanan Vs. Pralhad: Civil Appeal No. 3524 of 2026 arising out of SLP (Civil) No. 20405 of 2025), decided on 18.03.2026;** and **Hameed Joharan (D) and others Vs. Abdul Salam (D) by L.R's and others: (2001) 7 SCC 573;**

#### DISCUSSION

9. I have considered the submissions made and have perused the material available on record.

**(a) The application:**

10. First of all, the Court deems it appropriate to refer to the very nature of Misc. Application No. 41 of 2019 filed on behalf of the respondents. The entire application reads as under:-

“1- That OS No. 68/1972 Kunwar Pushpendra Singh Kama (Dead) Vs. Kunwar Harnam Singh Moti Singh Moti Sing (Dead) Others was filed for partition of immovable properties lying in Mumbai & Mainpuri. It was decided and Preliminary decree was passed.

2-That after passing of Preliminary decree the plaintiff decree the plaintiff applied for final decree and a commissioner was appointed to divide the disputed properties by metes and bounds and two Kura were made. One Kura was given to the applicants and the other one was given to opposite parties. On the bases of the said commissioner report a final decree was passed on 23.04.1982.

3- That against the said final decree dated 23.04.1982, first appeal bearing No. 407/1982 Ishwar Singh and others Vs. Pushpendra Singh and others was filed before Hon'ble Allahabad High Court, which was finally decided on 14.12.2012 and the appeal was dismissed.

4- That the against the order dated 14.12.2012 pass by Hon'ble Allahabad High Court, the appellant filed Special Leave Petition bearing no. 19626 of 2013 Ishwar Singh and others Vs. Pushpendra Singh Kama and others before Hon'ble Supreme Court of India, which decided on 15.11.2016. Hence the final decree became final on 15.11.2016.

5- That the trial court or any other court has not passed any order regarding the stamping of final decree, hence the final decree passed in favour of the applicant's could not be stamped nor was the final decree drawn up and engrossed on stamp papers.

6- That the applicants are having 54.4% share in the disputed properties as per the Preliminary as well as final decree. As per the valuation of plaintiff applicants are submitting the stamp according to their share is 54.4% is valuations of disputed property in the plaint is Rs. 74000/- hence the valid applicants share in 54.4% is 42256/-. The applicants are submit the stamp of 1/4th amount of their share as per court fees act i.e. Rs. 1195/-.

**7- That now the applicant's have deposited the stamp, hence the final decree made in favour of applicants and it be drawn up on stamp papers. ON the Hon'ble Court may assess the assessment of stamp and order accordingly. The applicants are ready and willing to depositing the stamp as ordered by the court.**

**It is, therefore, prayed that final decree be made in favour of applicants and it be drawn up and engrossed on the**

**stamp papers submitted by the applicants or the amount of stamp on which final decree in favour of applicant be ascertained and the applicants be allowed to submit the ascertained stamps and thereafter, the final decree in favour of the applicant's be drawn up and engrossed on stamp papers.**

**(b) The decree :**

11. The nature of partition decree passed and determination or non-determination of shares of the parties, being of significance, it would also be appropriate to make reference of the operative portion of the final decree, which reads as under:-

**“Let the decree be made final in terms of Commissioner's report (11 Ga) which shall form part of the decree,**

**Plaintiff and Defendant No. 1 will get Qura of Pink Colour** as shown in Maps No. 1 to 5 and plaintiff and Defendant No. 1 will get following Compensation as under:-

Rs. 43000/- vide para 23, 24,  
& 29 and Chart No. 3

of report commission  
of Shri M.C. Jain  
Adv.

Rs. 5500/- Vide para No. 35

Rs. 23000/- Vide para No. 36,

Rs. 5361/- Vide para No. 38

Rs. 1000/- Vide para No. 39

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Rs. 77861/-

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**(c) Commissioner's report (11-Ga)**

.....

6. It may be mentioned here that the plff. Kr. Pushpendra Singh and Kr. Harnam Singh deft. No. 1 had only demanded partition and said requisite court fee for preparation of their loss. In view of their aforesaid statement recorded on paper marked Annexure 1 one combined lot of 11/24 share was to be prepared for them **and the other lot of remaining 13/24 share was to be demarcated, prepared and left out for other Non-desirous remaining co-owners deftts. 2, 4 5 and 6 to 9** moreover, only two immovable properties described in item No. I of schedule A of the plaint (vide statement recorded in Annexure 2) **and schedule B of the plaint were to be considered for such a partition.**

25. **Thus finally the following scheme for partition** of Immovable and Movable Properties is submitted in the above noted case:

**Immovable Properties**

**26. That the Lal Singh building Bombay be divided into two lots or parts or sub-divisions 'G' and 'P' as shown in my sub-division plans map No.1 to 4 attached herewith. The southern sub-division 'G' shown by green colouring in map No. 2 to 4 south of the dividing red line will be given to Kr. Ganga Singh & others defendants No. 2, 4, 5 and 6 to 9 and they shall be entitled to**

get exclusive possession over the 16 shops, 1 Godown, 4 wooden stalls, 51 rooms, 15 W.Cs. 10 Bathrooms, 1 stair one lift, one well with water pump as detailed in Chart II. The dividing red line shown by JKLMNR in my Map No. 2 has been so selected it passes in such a way just at the places where generally the walls exist. It also divides the building vertically upwards as is clear from map No.2 to 4.

27. Similarly the Northern sub-division 'P' shown by pink colouring in my maps No. 2 to 4 north of the red dividing line will be given to Kr. Harnam Singh Deft. No. 1 and Kr. Pushpendra Singh Plff. and they shall be entitled to get exclusive possession over 11 Shops, 4 Godowns, 31 Rooms, 15W.Cs. 10 Bathrooms and one stair case as detailed in Chart II. This lot or sub-plot P or sub-divided Pink coloured portion will be owned and possessed by Kr. Harnam Singh Deft. No. 1 and Kr. Pushpendra Singh plff.

30. That the immovable property situated at Gola Bazar Mainpuri Civil Lines, Mainpuri detailed in item No. 1 of Schedule A of the plaint has also been divided into two sub-divided into two sub-divisions of 11/24 and 13/24 shares. The green coloured portion situated towards the north of the dividing red lines X Y in Map No. 5 will be given to Kr. Ganga Singh & others Deft. No. 2,4,5 and 6 to 9 and they will be entitled to get exclusive possession over the green coloured portion. The building and trees standing on this portion shall go with the land and green coloured portion. The valuation given in Chart IV is inclusive of the values of building and trees. The area and valuation of this green coloured portion according to chart IV works out to be the same as 13/24 share of the whole area and valuation of the whole plot.

12. Since learned counsel for the petitioner has argued that making Commissioner's report (11-Ga) as part of the decree would fall within the contours of Order XXVI Rule 14 (3) CPC where the Court can vary the decree in terms of the report, the provision is reproduced as under:-

**“14. Procedure of Commissioner.- (1) .....**

**(2) .....**

**(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.”**

13. In view of the very fact that Commissioner's report (11-Ga) describes shares of not only the plaintiff and defendant no. 1 but also of remaining defendants, submissions made that shares of no other party except plaintiff and defendant no. 1 was declared, runs contrary to the stipulations made in the Commissioner's report (11-Ga) and, hence, the arguments on that line fall. The indications made are actual determination of the shares, may be termed as scheme for partition and cannot be ignored after reading the entire report. As a matter of fact, the

entire report (11-Ga) could not be quoted in the decree, hence it was made part thereof and the indications made therein as regards court fees etc have their own significance independent of declaration of shares which has to be read as it is. As to other aspects, law would take its own recourse.

**(d) Stamp Act:**

14. Now the question falls for consideration is as to what is the significance of stamping a partition decree and, if not stamped, what is its status. For the said purpose, reference of certain provisions of the Stamp Act is required to be made. Sections 2(15), 3(a) and 29 (g) of the same provide as under:-

“2(15) **“Instrument of partition”**.— “instrument of partition” means any instrument where by co-owners of any property divide or agree to divide such property in severalty, **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:”

**3. Instruments chargeable with duty.** —Subject to the provisions of this Act and the exemptions contained in Schedule I, the **following instruments shall be chargeable with duty** of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say—

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

**“29. Duties by whom payable.** —In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne —

.....

by the person drawing, making or executing such instrument:

.....

(g) **in the case of an instrument of partition**—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, **when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.**”

15. From the above-referred provisions, it can safely be understood that a final decree of partition is an instrument chargeable with stamp duty and liability to pay the stamp duty lies on the parties in proportion to their respective shares as determined by the Civil Court. Therefore, once this Court has found that shares of various parties were determined under the final decree, the Commissioner's report (11-Ga) was part whereof, if the application for engrossment of the partition decree was moved by anyone or more of the parties to the suit, no error is found in the said action and it cannot be accepted that it was the decree drawn only in favour of the parties other than those who had applied for its engrossment on stamp papers. The Court may also observe that had the application for engrossment of the decree not been moved or had the decree not been engrossed thereon, it would have become inadmissible in evidence and, in this regard, reference can be made to Section 35 of the Act, 1899, which reads as under:-

**“35. Instruments not duly stamped inadmissible in evidence, etc.** — 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 :**  
 .....

**(e) Effect of dismissal of First Appeal:**

16. Now arises the question as to what would be the effect of dismissal of First Appeal by this Court against the final decree. Much emphasis has been laid on the findings recorded by this Court while dismissing the First Appeal. Relevant portions of the order referred to by learned counsel for the petitioner read as under:-

“No principle of law or precedent was placed before me to show that it necessarily requires that there can only be one final decree of partition amongst the co sharers. On the contrary, law is that there may be more than one final decrees of partition, depending upon the facts and

circumstances of each case. It was plaintiff Kunwar Pushpendra Singh who insisted for carving out of his share separately, it is he who filed the suit for partition. It is true that in a suit for partition, everybody is plaintiff and defendant but the fact remains that every possible attempt was made by Ganga Singh (defendant no. 2) and his sons who are appellants herein to forestall the partition proceedings. It is matter of record. The court below has committed no error if the share of the plaintiff with the consent of the defendant no. 1 have been jointly carved out to the exclusion of other co sharers.

.....

Strangely enough, he went a step ahead in advancing the argument while criticizing the Commissioner's report that the Commissioner should have carved out the quras of the plaintiff and defendant no.1 also. The said argument was advanced with a view to confuse the issue and is not available to him in view of the fact that the defendant no.1 and the plaintiff consciously agreed that they may be allotted a joint qura. What possible objection could the appellants have to such arrangement, it is difficult to understand.

To conclude, there is no merit in the aforesaid submissions of the learned counsel for the appellants. **It shall be open to the appellants who have already applied for separation of their quras to pursue their applications, filed earlier, for carving of their quras which will be done, by the court below.**

17. In the opinion of the Court, the observations made by this Court cannot be read in the manner so as to oust the respondents from the scene and once observation was made that there may be more than one final decree of partition and the share of the plaintiff with the consent of defendant no. 1 was jointly carved out to the exclusion of other co-sharers, the same does not mean that no share at all of remaining defendants was declared. The finding has to be read only as regards jointness of the shares of plaintiff and defendant no. 1 to the exclusion of other co-sharers and the same does not mean that other stipulations qua determination of shares of remaining defendants can be ignored, particularly when paragraphs no. 25, 26, 27 and 30 of the Commissioner's report (11-Ga) clearly indicate the shares of the remaining defendants.

18. Further, once this Court, while deciding the First Appeal, left it open to the appellants, to pursue their applications for separation of their kurras, it would not mean that they have lost their claims to get their kurras separated. As to whether the parties other than the plaintiff and

defendant no. 1 took any steps either during the course of preparation of decree or thereafter, it would be appropriate to refer an application 195-C filed by defendant no. 9 to get a separate lot on 30.11.1981 that was allowed by the learned trial court by order dated 02.12.1981 granting 15 days' further time for depositing court fees. It is necessary to quote the application paper no. 195-C which reads under:-

“प्रार्थना पत्र बाबत मुतरिब कराने कुरा मिनजानिब प्रतिवादी संख्या 9

श्रीमान् जी,

निवेदन है कि प्रार्थी को विवादित जायदाद में २/८ भाग मिला है। प्रार्थी तसफिया के आधार पर अपना कुरा अलग बनवाना चाहता है। अतः प्रार्थना है कि प्रार्थी का २/८ भाग का कुरा अलहदा बनाये आने का आदेश प्रदान किया जावे।

प्राथी कोर्ट फीस अपने कुरा की अदा करने को तैयार है।

Sd- /Illegible,

श्री ईश्वरसिंह गंगासिंह प्रतिवादी सं० 9

द्वारा भी प्रेम चन्द दुबे एडवोकेट

३०-११-८१

३०-११-८१”

19. Following orders were passed on the aforesaid application:-

“It is declaratory Court fee sought to have been deposited alongwith the application.

Sd-Illegible.

30/11/81.

Heard, Allowed. Court fee may filed by 15 days further fixed.

Sd-Illegible.

2/12/81.”

20. In view of the above, it can safely be observed that the defendant no. 9 not only attempted to get his share separated but he also was ready to deposit the court fees, for which, time was also granted by the Court to him and whether granting such time and availing or not availing the same would at all be relevant for the purposes of the present case, is not to be discussed as the said aspect of the matter is beyond the scope of the preset petition. However, the misc. application No. 41 of 2019 referred in paragraph No. 10 of this judgment containing composite prayer(s) is also on the same/similar lines and could not be rejected, hence, rightly allowed by the order impugned.

**(f) Stamp Duty and Court fees- the conceptual distinction:**

21. Learned counsel for both sides have emphasized upon deposit or non-deposit of court fees by desirous or alleged non-desirous parties to the suit and arguments were attempted to be co-related to the requirement of the engrossment of partition decree on stamp papers. It was also argued on behalf of the petitioner that since the decree was endorsed on non-judicial stamp papers, the same would not amount to deposit of court fees by all non-desirous defendants and, for this reason also, they should not have been permitted to get the decree engrossed on stamp papers. In light of such submissions, the Court deems it appropriate to articulate distinction in between the concept of stamp duty and court fees.

22. The Court ought not to conflate the requirement of engrossment of a decree on non-judicial stamp paper with the obligation to deposit court fees in a suit for partition or in any other proceeding. In fact, the requirement of engrossment under the Stamp Act emanates from the applicability of Section 3(a) read with Section 29(g) and the use of non-judicial stamp papers is entirely distinct from the use of judicial stamp papers used for payment of court fees. The two concepts, i.e., (i) stamping of an instrument under the Indian Stamp Act, 1899 and (ii) payment of court fees under the Court Fees Act, 1870 operate in distinct legal domains, serve different fiscal purposes and are governed by separate statutory schemes. Any attempt to conflate them, particularly in the context of partition decrees, leads to doctrinal error.

23. Stamp duty is a tax on instruments. Its incidence arises upon the execution of an instrument specified in Schedule I (or IA as amended by States). The charging provision is Section 3 and the liability is attracted irrespective of litigation, i.e., even outside court proceedings. It is transaction-oriented as the duty is levied on the instrument embodying a transaction (e.g., conveyance, lease, partition, settlement etc). It is concerned with validity for evidentiary and enforceability purposes. Under Section 35, as noted above, an instrument, not duly stamped, is inadmissible in evidence.

24. On the other hand, Court fee is a fee on the institution and prosecution of proceedings in a court of law. It is process-oriented, levied on plaints, written statements, appeals, applications, etc. It is a condition precedent for the court to entertain a proceeding. Its measure depends upon the nature of relief claimed (ad valorem or fixed) and not upon execution of any instrument. It has no bearing on the intrinsic validity or admissibility of a document as an “instrument.” There is no statutory interdependence between the adequacy of stamp duty on an instrument and the liability to pay court fees in a civil proceeding. A document may be duly stamped but insufficiently court fee paid and another situation can be that proper court fee has been paid in litigation but instrument is unstamped/insufficiently stamped.

25. The obligation to engross a final decree for partition on non-judicial stamp paper is a post-adjudicatory fiscal incident arising from the transformation of a declaratory decree into an executable instrument of partition and bears no juristic or fiscal correlation with the levy or sufficiency of court fees at any stage of the suit or its execution. In partition suits, when a preliminary decree is passed declaring shares of parties, no instrument of partition comes into existence at that stage, hence no stamp duty is attracted. The final decree effecting actual division, embodies partition and has been treated in law as akin to an “instrument of partition”. Consequently, it may require stamp duty under the Stamp Act at the stage of engrossment. Therefore, if any one or more of the defendants whose shares have been declared, seek to have their respective portions (kurras) separated on the spot, they are under statutory obligation to deposit the requisite court fees in accordance with law. The requirement of engrossment on stamp paper being a separate and independent aspect, cannot be intermixed or confused with the issue of deposit or non-deposit of court fees.

26. Accordingly, the submission that the petitioners or other alleged non-desirous defendants, having not paid the requisite court fees, would not derive any advantage out of the engrossment of the decree on non-judicial stamp papers, is not acceptable. Nothing has been brought to the

notice of the Court to suggest that the right to deposit court fees, whether during the course of execution or in exercise of the Court's power to grant further time, stands extinguished at any stage. In other words, there is no legal bar preventing the payment of deficient court fees during execution proceedings.

**(g) On the question of limitation:**

27. The learned A.D.J., in the order impugned, has observed that after the First Appeal was dismissed by the High Court on 14.12.2012, Special Leave Petition was filed before the Hon'ble Supreme Court that was dismissed on 15.11.2016; the application seeking engrossment was filed on 15.10.2019 and, therefore, even if three years period is computed as per Article 137 of the Schedule, the application was filed within three years from the dismissal of Special Leave Petition and, thus, was within time. As regards right of the respondents to get the decree engrossed, observation was made that since every party in a suit for partition is plaintiff and defendant, the respondents being parties to the suit and the Commissioner's report having been made part of the decree, they be allowed to get the decree engrossed.

28. As to whether the finding of the learned A.D.J. on question of limitation is correct or not, it would be appropriate to refer Articles 136 and 137 of the Schedule contained in the Limitation Act, which provide as under:-

**Article 136**

<b><u>Description of suit</u></b>	<b><u>Period of limitation</u></b>	<b><u>Time from which period begins to run</u></b>
For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in

respect of which execution is sought, takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

### **Article 137**

<b><u>Description of suit</u></b>	<b><u>Period of limitation</u></b>	<b><u>Time from which period begins to run</u></b>
Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	When the right to apply accrues.

29. Article 136 of the Act of 1963 prescribes twelve years period for execution of a partition decree and arguments were also advanced as to when the decree becomes enforceable or executable. The Calcutta High Court, in the case of **Biswapati's case (supra)**, has laid down that the word “**enforceable**” should be read in its literal sense, furnishing of stamp paper is an act entirely within the domain and control of the appellant and any delay in the matter of furnishing of the same cannot possibly be said to be putting a stop to the period of limitation being run and no one can take advantage of his own wrong and that engrossment of stamp paper would undoubtedly render the decree executable but that does not mean and imply that the enforceability of the decree would remain suspended until furnishing of the stamp paper.

30. In the case of **Kerala State Electricity Board (Supra)**, it was held that the words "any other application" under Article 137 cannot be said on the principle of *ejusdem generis* to the applications under the Civil Procedure Code and that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court and is not confined to applications contemplated by or under the CPC.

31. In the case of **Chiranji Lal (supra)**, the Hon'ble Supreme Court has held that the engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act within the domain, purview and control of a party.

32. It is not to be forgotten that this Court, in the present petition, is not examining the period of limitation *qua* execution of the final decree, rather the scope is confined to examine limited challenge to the correctness of the order on an application seeking engrossment of decree on stamp papers and, therefore, following the decision in the case of **Chiranji Lal (supra)**, the Court finds that no date or period is fixed for furnishing stamped papers and it cannot be said that the period of limitation would begin from the date of engrossment of a decree on stamped paper.

33. Now, even if the argument of the petitioners based upon Article 137 of the Schedule is accepted as it is, words **'when the right to apply accrues'** appearing in the said Article would be of quite significance. As to when would such right to apply for engrossment of a final decree on stamp paper would arise, the Court holds that since executability/enforceability of a partition decree is not dependent upon its engrossment on stamp papers and wherever the decree attains finality, the period of limitation for its execution starts independent of engrossment. The limitation for execution being 12 years as per Article 136, if any party moves an application at any time during subsistence of period of limitation for execution, the application would remain within time, inasmuch as **'right to apply'** would accrue and continue to remain alive at any point of time during the said period of limitation.

34. Let us consider a hypothetical situation where, just before the end of period of limitation for execution of the decree, any party applies for engrossment of the decree on stamp papers, say for example after 11

years and 11 months of the finality attached to the decree. In such a situation, the application would still remain within time and, as soon as the said application is allowed and the decree is engrossed on stamp papers, it would become admissible in evidence as per Section 35 of the Act, 1899. As to whether engrossment would be a pre-requisite for execution or not, is totally an independent aspect of the matter as neither under the Stamp Act nor under C.P.C., it is provided that it is only when a decree is engrossed on stamp papers, the same would become executable.

35. The Court may go even to the extent where the limitation of execution of the decree expires and the application for engrossment is moved thereafter. In that event, the executing court may be within its competence to dismiss the execution application as barred by limitation, however, in so far as the application for engrossment of the decree on stamp paper is concerned, the same being an independent aspect, the application can still be allowed and the decree can be engrossed. In such an event, execution may not materialize on account of it having become barred by limitation, nevertheless, for the purposes of admissibility of a partition decree in evidence as per Section 35 of the Act, 1899 read with any other provision of law, an engrossed decree would become admissible in evidence and the parties may utilize it for any purpose. The Court need not enter into further discussion as to whether without engrossment, the decree would or would not be accepted by the executing court as admissible for the purposes of execution also and the Court, in the present case, confines its discussion mainly on the limitation of moving application for engrossment.

36. In view of the above discussion, though the learned A.D.J. has assigned different reason for holding the application within the period of limitation, this Court otherwise holds the application as within limitation and discards contrary submissions advanced on behalf of the petitioner.

**CONCLUSION**

37. In view of the above discussion, this Court is of the considered opinion that shares of the parties other than plaintiff and defendant no. 1, were also declared under the final decree as per the Commissioner's report 11-Ga that was made part thereof, and their attempt to get the decree engrossed on stamp papers did not suffer from any factual or legal bar and the application moved for that purpose was well within limitation.

38. At the same time, it is also observed as to what would be the fate of execution proceedings or any other proceedings pending or that may be instituted by any of the parties in furtherance of the partition decree, is altogether a different aspect and determination of issues involved in the present petition would not affect consideration of those separate proceedings by the courts concerned in accordance with law. The discussion made hereinabove is restricted and confined to the issues raised qua engrossment of final decree of partition on stamp papers and no error is found therein.

39. The present petition is, accordingly, **DISMISSED**.

**Appreciation for lawyers:**

40. The Court would fail in its duty if it does not place on record its deep appreciation for the remarkable assistance rendered by learned counsel for both sides. Submissions advanced by them on typical and rare issues of civil law were exhibited with precision and had great persuasive value. The arguments were based upon deep study of the factual and legal issues involved and projected in multidimensional form and, therefore, the Court records all its appreciation for Shri Shreyas Srivastava and Shri Abhishek Kumar Advocates.

**(Kshitij Shailendra,J.)**

**May 7, 2026**

AKShukla/-