

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9637 OF 2022

1. Raghu s/o Narayan Dukre,
Age 68 years, Occupation Agri.,
2. Shri. Karbhari s/o Narayan Dukre,
(Died Through LRs.)
 - 2-1. Manda w/o Karbhari Dukre,
Age 65 years, Occ.Household,
 - 2-2. Sayaji Karbhari Dukre,
Age 40 years, Occ.Agril.,
 - 2-3. Sangita Dnyaneshwar Pawar,
Age 35 years, Occ.Household,
3. Baban s/o Narayan Dukre,
Age 55 years, Occ.Service.,
4. Sampat s/o narayan Dukre,
Age 45 years, Occ.Agril.,
5. Navnath s/o Narayan Dukre,
Age 33 years, Occ.Agril.,

All R/o. Malewadi-Dukrewadi,
Tq.Rahuri, Dist. Ahmednagar.

...Petitioners

VERSUS

1. Gorakshnath s/o mahadeo Nalkar,
Age 60 years, Occ.Agril.,
2. Sow. Alka w/o Gorakshnath Nalkar,
Age 54 years, Occ.Household,

Both R/o Gajanan Wasahat,

Tq.Shrirampur, Dist.Ahmednagar.

3. The Tahsildar, Rahuri,
Tq. Rahuri Dist. Ahmednagar,
4. The Sub-Divisional Officer,
Shrirampur Division, Shrirampur,
Tq. Shrirampur Dist.Ahmednagar.

..Respondents

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Advocate for Petitioners : Mr. Arora Shyam C.
AGP for Respondent Nos.3 and 4 : Mr. K. B. Jadhavar
Advocate for Respondent Nos.1 and 2 : Mr. D. R. Markad

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CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Judgment :
11/01/2023**

**Date of Pronouncing the Judgment :
18/01/2023**

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. By the present writ petition, the petitioners are challenging the orders passed by the Mamlatdar under Section 5 of the Mamlatdar's Courts Act, 1906 in Rasta Case No.13 of 2018, and the order dated 28/06/2022 passed by the respondent No.4-The Sub-Divisional Officer, Shrirampur Division, Shrirampur, Dist.Ahmednagar, in Revision No.176 of 2021 allowing the Rasta Case filed by the

respondent Nos.1 and 2 herein.

3. Brief facts giving rise to the petition can be summarized as under :-

The petitioners and the respondent Nos.1 and 2 are adjacent land holders. The respondent Nos.1 and 2 had filed a Regular Civil Suit No.23 of 2016 on 07/01/2016 against the said respondents for the following reliefs :-

“वादीचे दावा मिळकत ग.नं.२०३ मध्ये शेतजमिनीची मेहनत मशागत करणेचे कामी, पिकलेला शेतमाल बाहेर काढण्यासाठी ग.नं. २०४ च्या उत्तर दक्षिणेचे बांधाने काही क्षेत्राच्या पट्टीतून असलेल्या रस्त्याने जाणे येणेस हरकत अडथळे प्रतिवादी नं.१ ते ५ यांनी वादीना करू नये असा निरंतर ताकीद मनाई हुकूम प्र. वादीविरुद्ध देववावा.”

English translation reads as under :-

“Order of permanent injunction be passed against the defendant Nos.1 to 5 for not obstructing the Plaintiffs from cultivating the agricultural land in the Gut No.203, the suit property and using the way situated in the strip made of some of the area alongside of the North to South bandh of the Gut No.204 for to and for bringing the agricultural produce from the said land.”

The plaintiff/ respondent Nos.1 and 2 filed the Regular Civil Suit No.23 of 2016, before the Civil Judge, Junior Division, Rahuri against the petitioners for claiming injunction from obstructing use

of access road over land Gut No.204 belonging to the petitioners. In the said suit, the respondent Nos.1 and 2 prayed for appointment of Court Commissioner which was allowed and the Court Commissioner carried out spot inspection of the road access on Gut No.204 on 03/09/2017 and submitted his report on 15/09/2017. The report given by the Court commissioner was adverse to the respondent Nos.1 and 2. The Court Commissioner had given a report along with a map indicating that there is a separate access to the respondents and there was no access to the respondents No.1 and 2 land from the petitioners land.

4. Meanwhile, the respondents No.1 and 2 on 09/12/2018 filed an application before the Mamlatdar's Court under the Mamlatdar's Courts Act for removal of obstruction on the above land Gut No.204 and restoring the access of the said respondents to the said gut number being Rasta Case No.13 of 2018. There was an inquiry initiated under the Mamlatdar's Courts Act.

5. The respondents withdrew the Regular Civil Suit No.23 of 2016 on 20/02/2020. Thereafter, the Rasta Case was allowed by the Mamlatdar after conducting inquiry and the same was upheld by the Revisional Authority respondent No.4-the Sub-Divisional Officer,

Shrirampur Division, Shrirampur Dist.Ahmednagar.

6. It is the contention of the petitioner that once a suit is filed for injunction from obstruction of the respondents access, the jurisdiction of the Mamlatdar Court under the Mamlatdar's Courts Act is excluded under Section 26 (2) of the Mamlatdars' Courts Act, and no proceeding under the Mamlatdars' Courts Act can be initiated for removal of obstruction on the same pathway/road.

7. Per contra, it is the contention of the respondent Nos.1 and 2 that the cause of action for filing of the suit and the application under Section 5 of the Mamlatdar's Courts Act, are different. He relies upon the cause of action stipulated in the plaint as well as the application under Section 5 of the Mamlatdar's Courts Act. The cause of action is at paragraph No.7 of the Rasta Case No.13 of 2018, it is as under :-

"७. १५ जुलै २०१८ मध्ये अर्जदारांनी त्यांचे मिळकतीत सोयाबिन व मक्याचे पिक केलेनंतर सुमारे २० ऑगस्ट २०१८ रोजी सदरच्या पिकास कोळपणी कामी आउतफाटा नेण्यास सामनेवालेनी मज्जाव केला व तिथे आस्तीत्वात असलेला रस्ता मोडुन जनावरांचे चा-याचे घासाचे पिक व गिन्नी गवत केले व अर्जदारांची जा ये पुर्णपणे बंद केली. अर्जदाराने सामनेवाले यांना समजावुन सांगणेचा प्रयत्न केला परंतु सामनेवालेनी अर्जदारांचे काही एक ऐकले नाही त्यावेळी व तदनंतर नित्य अर्जास कारण घडत आहे."

English translation reads as under :-

"7. After sowing the crops of Soyabean and Maze by the applicants on July 15, 2018, the defendants obstructed the applicants in taking the plough and other equipment for the weeding the field on August 20, 2018 and by removing the way that was existing there, the defendants sown the fodder and the Guinea grass and stopped the easement of the applicants completely. The applicant tried to convince the defendants but in-vain and the cause of action arose and continued to arise since."

And the cause of action in Regular Civil Suit No.23 of 2016 at paragraph No.5 is as under :-

"५. दाव्यास कारण - वादीनी प्रतिवादीना दावा मिळकत मोलमजूरीने (वादयाने) कसणेसाठी दिली नाही, दावा मिळकतीतील विहिरीचे पाणी दिले नाही याचा राग आल्याने प्रतिवादीनी वादीना दावा मिळकतीचे वागवहिवाटीस, दावा मिळकतीत जाणेयेणेसाठी ग.नं.२०४ चे दक्षिणेचे बांधाने असलेल्या रस्त्याचे वापर उपभोगास निष्कारण हरकत अडथळे करणेस सुरुवात केली, पोलीस स्टेशनला तक्रार करुनही जुमानले नाही, समजाउनही ऐकले नाही, दि. २९/११/२०१५ रोजी वादी नं.१ यांना दावा मिळकतीत मशागतीसाठी सदर रस्त्याने गेले असता प्र.वादीनी जाणेयेणेस हरकत केली व रस्त्याने पुन्हा आलात तर जिवे मारु अशी दमदाटी केली त्यावेळी दाव्यास कारण घडले व तदनंतर नित्य कारण चालुच आहे."

English translation reads as under :-

"5. CAUSE OF ACTION : The Defendants, by holding the grudge that the plaintiffs did not give the defendants the suit property for cultivating the land said land on share basis and did not allow to use the water from the well situated in the suit property, started obstructing the

plaintiff to approach the suit property by using the way alongside of the southern bandh in the Gut No.204 without any reason, paid no heed to the police complaint also and when the plaintiff No.1 had gone to the suit property for the cultivation on 29-11-2015, the defendants obstructed the plaintiff and threatened him of life if he came again by that way. Therefore, the cause of action arose and continued to arise since then.”

The learned Advocate for respondent Nos.1 and 2 submits that both these cause of actions being different, the suit as well as the application under Section 5 of the Mamlatdar's Courts Act are maintainable and there is no bar to file the proceeding under the Mamlatdars' Courts Act merely because the plaintiffs/respondent Nos.1 and 2 has filed an earlier suit for injunction from obstruction of the road/access.

8. Having considered the rival submissions, it is to be noted that the cause of action for the suit is an obstruction created over land Gut No.204 for the access of the respondents through the petitioners land. The is cause of action as mentioned in the application under Section 5 of the Mamlatdar's Courts Act is that, there is complete obstruction and the same access is completely stopped. The jurisdiction of the Mamlatdar under the Mamlatdar's Courts Act can

be invoked if there is an obstruction to the road and the same has to be filed within a period of six months from the date of first obstruction. The proceedings under the Mamlatdars' Courts Act are never final and are subject to the orders passed by the Civil Court.

9. The first obstruction of the road was as noticed in the plaint is in the year 2015. The subsequent complete blockage of the road does not make the obstruction different. The jurisdiction to invoke the application under Section 5 of the Mamlatdar's Courts Act first arose before filing of the plaint and it continued for a period of six months from the date of first obstruction. The nature of obstruction hardly matters. Once there is an obstruction of road/access, the application under the Mamlatdars' Courts Act has to be filed within six months. The respondents instead of preferring an application under Section 5 of the Mamlatdar's Courts Act, had preferred a civil suit and once a civil suit is filed for injunction from obstruction on the same access, the proceedings under Section 5 of the Mamlatdars' Courts Act is barred under Section 26 (b) of the said Act.

10. Section 5 of the Mamlatdar's Courts Act, is reproduced as under :-

"5. (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be [fixed by the State Government,--

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon;

(b)

(2)

(3) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) The cause of action shall be deemed to have arisen on the date on which the [impediment to the natural flow of surface water or the] dispossession deprivation or determination, of tenancy or other right occurred, or on which the [impediment,] disturbance or obstruction, or the attempted [impediment or] disturbance or

obstruction, first commenced.

So also Section 26 of the Mamlatdar's Courts Act, is reproduced as under :-

*"Section 26 :- No suit shall lie under this Act,--
(b) in respect of [any removal of any impediment or of] any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court or under chapter XII of the Code of Criminal Procedure, 1898."*

In view of the bar under Section 26 (b) of the Mamlatdars Courts Act, the jurisdiction of the Mamlatdar's Court to entertain the application under Section 5 of the Mamlatdar's Courts Act is barred once a Civil Suit for injunction is filed for removal of obstruction.

11. In case of *Vishwanath Rambhaji Bhalerao and anr. vs. Usha Pralhad Kasbe*, reported in 2011 (1) Mh.L.J.603, this Court it has held as under :-

"On the contrary, if it shown that a Civil Suit is filed in respect of matter covered by Section 26 (b) of the said Act, prior to initiation of proceedings under Section 5 of the Mamlatdar's Courts Act, then there is a bar to entertain the suit under the provisions of Mamlatdar's

Courts Act. It is then urged, that Section 26 (b) would be attracted only in case where there is already a decision of a Civil Court, as the phraseology used therein is "that has been the subject of previous proceedings" in a Civil Court. However, this is also not acceptable for the reason that the legislature would have used the word "decided" or "concluded" in respect of the proceedings or Civil Suit covered by Section 26 (b) of the said Act. The contention is, therefore, rejected."

"8. Shri. Chapalgaonkar, on the other hand, urged that once it was pointed out to the Mamlatdar's Court that the Regular Civil Suit was filed by petitioners, it could not have proceeded with the matter and should have directed the parties to get their rights decided in Civil Court. This contention also cannot be accepted for the reason that bar of jurisdiction of Mamlatdar's Court under Section 26 (b), operates only when it is pointed out that Civil Suit was filed prior to institution of proceedings under Section 5 of the said Act. In the present case, Regular Civil Suit No.108/2008 was filed after institution of proceedings under Section 5 of the Mamlatdar's Courts Act. Hence, it cannot be said that Mamlatdar's Court proceeded without jurisdiction or that it could not have proceeded with the matter, as urged."

12. Thus I hold the cause of action to file proceedings under the Mamlatdar's Courts Act arose on 29/11/2015, as stated in the Regular Civil Suit No.23 of 2016 and the limitation to file the

proceedings under Section 5 (3) is six months of cause of action. As per Sub-section (4) of Section 5 of the Mamlatdar's Act the limitation is to be counted from the date of first obstruction and thus the proceedings initiated under the Mamlatdar's Courts Act is clearly barred by limitation.

13. Further, in view of the bar contained in Section 26 (b) of the Act and the law laid down in the case of *Vishwanath Rambhaji Bhalerao (Supra)*, the previous suit filed by the respondent Nos.1 and 2 for injunction from obstruction of the access from Gut No.204 clearly bars the proceedings under Section 5 of the Mamlatdar's Courts Act for removal of obstruction from the same access from Gut No.204.

14. In view of the above, the writ petition is allowed. The impugned orders dated 24/06/2021 and 28/06/2022, passed by both the authorities under the Mamlatdar's Courts Act are set aside.

Rule is made absolute with above directions.

(ARUN R. PEDNEKER, J.)

vj gawade/-.