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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2006 OF 2015

Baisabai K.Sandbhor ... Petitioner

Vs.

Hairbhau P. Muluk and others ... Respondents

Ms.Gauri Jadhav, Advocate for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 12th AUGUST, 2015

P.C. :

. Heard Ms.Gauri Jadhav, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the order dated 28/10/2014 passed by the learned Civil Judge, Junior Division, Khed below Exhibit 28 in Regular Civil Suit No. 358 of 2013. By that order, the learned trial Judge disposed of the application dated 10/02/2014 made by the petitioner, hereinafter referred to as plaintiff for calling record and proceedings of Case No. Land/Road/43/SR/6/2013 by holding that petitioner can obtain certified copies from the Revenue Department.

3. In support of this Petition, Ms.Jadhav strenuously contended that the application was made by the respondents under

Section 143 of the Maharashtra Land Revenue Code, 1966 (for short 'Code'). By order dated 19/10/2013, Tahsildar, Ambegaon, Pune allowed the application filed by the respondent and held that the said decision shall be subject to the outcome of the Regular Civil Suit No. 583 of 2012 instituted by the plaintiff herein. She submitted that Regular Civil Suit No. 583 of 2012 was instituted by the plaintiff on 06/10/2012 for perpetual injunction. The plaintiff filed application dated 18/06/2013 Exhibit 38 for withdrawal of the Suit with liberty to institute Suit after the decision of Tahsildar in proceedings under Section 143 of the Code. By order dated 18/06/2013, the learned trial Judge permitted plaintiff to withdraw the Suit. She submitted that Tahsildar, therefore, was not justified in directing that his decision shall be subject to the outcome of Regular Civil Suit No. 583 of 2012 when that Suit itself was not pending. She further submitted that the decision of Tahsildar under Section 143 of the Code can be challenged in a civil Suit in view of Section 143(4) of the Code. The Civil Court has power to set aside or modify the order of the Tahsildar under Section 143. The said power can be exercised after calling for record and proceedings of case before Tahasildar. She also relied upon clause 459 of Civil Manual which lays down that after appeals are admitted, the concerned Court shall consider the necessity of the record and proceedings for the purpose of a final hearing of the appeal and then pass necessary orders for

calling upon the trial Court to send record and proceedings to it, if required. Otherwise, the Court shall pass the necessary order for not requisitioning the record and proceedings for the purpose. She submitted that the Suit instituted under Section 143(4) challenging decision of the Tahsildar under Section 143 is in substance appeal against the decision of Tahsildar. The Appellate Court has power to call for record and proceedings. The learned trial Judge was, therefore, not justified in not calling for record and proceedings and directing the plaintiff to file certified copies.

4. She further submitted that by order dated 19/10/2013, Tahsildar allowed the application under Section 143 of the Code. In the application, respondent prayed for holding enquiry and issuing injunction restraining the respondents therein who are in possession of Gat Nos. 64/11 & 64/12 from causing any obstruction as also removal of the obstruction. However, while allowing the application, Tahsildar has sanctioned 10 feet road from southern side of Bandh of Gat No. 27/3. In other words, Tahsildar did not grant relief as prayed by the respondents in their application.

5. I have considered the submissions advanced by Ms.Jadhav. I have also perused the material on record. The short question is whether the Civil Court is exercising Appellate Court's power over the order of the Tahsildar passed under Section 143 of the Code. Section 143 of the Code read thus :

“143. Right of way over boundaries :-

(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

6. Section 247 of the Code lays down that in the absence of any express provisions of the Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of the Schedule E under the Code or any other law for the time being in force to the officer specified in column 2 of that Schedule.

7. Section 252 lays down that no appeal shall lie from orders (a) admitting an appeal or an application for review under Section 251; (b) rejecting the application for revision or review; or (c) granting or rejecting an application for stay. In other words, appeal against order passed under Section 143 of the Code is permissible and order passed in proceedings under Section 143 are not included in Section 252.

8. Section 255 lays down power of the Appellate Authority

and lays down that Appellate Authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it. In other words, against the order passed under Section 143 of the Code by Tahsildar, appeal is provided under Code and under Section 255, Appellate Authority has power to call for record and proceedings of the case. Clause 459 lays down that after the appeals are admitted, the concerned Court shall consider the necessity of the record and proceedings for the purpose of a final hearing of the appeal and then pass necessary orders for calling upon the trial Court to send record and proceedings to it, if required. Otherwise, the Court shall pass the necessary order for not requisitioning the record and proceedings for the purpose. Order 41 Rule 11 of C.P.C. also empowers the Court to dismiss the appeal without sending notice to the lower Court. Considering the provisions of Sections 143(4), 252, 255 of the Code read with clause 459 of the Civil Manual with Order 41 Rule 11 of C.P.C., I am satisfied that the Civil Court can not be construed as an Appellate Authority over the decision of Tahsildar.

9. By the impugned order, the learned trial Judge has not accepted the request made by the plaintiff for calling upon record and proceedings and observed that plaintiff can obtain certified copies of the record and proceedings from the Revenue Department. The learned trial Judge further observed that Revenue Department is

not subordinate to it.

10. In the light of the above discussion, I do not find that the learned trial Judge has committed any error in passing the impugned order. The plaintiff is at liberty to apply for certified copies from Revenue Department and file the same in the Civil Court. The learned trial Judge will decide the Suit on the basis of the evidence on record in accordance with law uninfluenced by the observations made in this order. Subject to above, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)