

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.1130 OF 2014

Suresh Marutrao Jagtap and others

.. Applicants

Versus

Ramchandra Shankar Kokare and others

.. Respondents

Ms. Savita A. Prabhune, for the Applicants.

CORAM : R.M. SAVANT, J.

DATE : 09th FEBRUARY, 2015

PC.

1. The Revisionary Jurisdiction of this Court under Section 115 of the CPC is invoked against the order dated 06.09.2014 passed by the Learned Civil Judge, Senior Division, Baramati, by which order the application Exh.29 filed by the Defendants No.4 to 6 questioning the maintainability of the suit by invoking Order 7, Rule 11(D) of the CPC came to be rejected.

2. The suit in question being Regular Civil Suit No.184 of 2014 has been filed by the Plaintiffs for setting aside the order dated 28.11.2013 passed by the Tahsildar, Baramati in exercise of the powers conferred by Section 5 of the Mamletdars Court's Act, 1908. The said order is in respect of flow of water coming from the land of the

Defendants being Gat No.218 towards the land of Plaintiffs being Gat No.214. The said application Exh.29 is opposed to on behalf of the Plaintiffs that apart from the relief sought in the suit, the Plaintiffs have sought an injunction against the Defendants thereby restraining them from draining water from their land to the land of the Plaintiffs. It is the case of the Plaintiffs that the Defendants in spite of natural flow of water from the eastern side of land of Defendants No.4 to 6 have stopped the same by making encroachment over portion of Nala/Chari and have made arrangement for the water to flow towards the land of Plaintiffs i.e. Gat No.214. It is in the said circumstance that the suit in question was required to be filed by the Plaintiffs. It is also the case of the Plaintiffs that in passing the said order the Tahsildar has exercised jurisdiction which is beyond the scope of his powers vested under Section 5 of the Mamletdars Court's Act. The Trial Court whilst adjudicating upon the said issue has observed that the said issue is a mixed question of law and fact and therefore, it is only the Civil Court which can decide the said issue. The Trial Court also observed that the Tahsildar has passed the order without ascertaining the earlier existing position or any alternate option that is available to the parties. The Trial Court adverted to the fact that the powers of the Tahsildar are of a summary nature and having regard to the dispute involved the same is required to be decided by the Civil Court. The

Trial Court therefore, observed that the grievance of the Defendants No.4 to 6 thereby seeking rejection of the plaint could not be accepted. The Trial Court has accordingly rejected the application Exh.29 by the impugned order dated 06.09.2014.

3. It is required to be noted that against the order of the Tahsildar dated 28.11.2013, the Plaintiffs have filed an Appeal before the Sub Divisional Officer. However, they have stated that though the Sub Division Officer had initially passed an order of status-quo, the said order of status-quo has been thereafter vacated without any reason and possibly on account of the political patronage the Defendants enjoyed. The Plaintiffs have therefore averred that it is in the said context that the suit was required to be filed. In so far as the provisions of the Mamletdars Court's Act are concerned, Section 22 thereof provides that any order passed by the Tahsildar would be subject to the decree or order that would be passed by the competent Civil Court. Hence, even if the Sub Divisional officer was to decide the issue it is open to either party to approach the Civil Court to assert his/her civil rights as under the Mamletdars Court's Act only temporary relief can be provided to the parties. The Tahsildar obviously cannot decide the civil rights between the parties. Whether the Plaintiffs would be entitled to the relief sought in the suit is another matter. However, the suit as filed cannot be said to be not maintainable as

contended by the Defendants. Hence, the order passed by the Trial Court cannot be said to suffer from any error of jurisdiction in the matter of entertaining the suit. Hence, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]