

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

904 WRIT PETITION NO. 9809 OF 2016

SHAIKH SAYYAD NOOR FAKIR MOHD
VERSUS
MACCHINDRA PARBHAT PANDURE AND OTHERS

...
Advocate for Petitioner : Deshmukh H.D.
AGP for Respondent/State : A.P. Basarkar
...

CORAM : T.V. NALAWADE, J.
DATED : 1st October, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Senior Division, Newasa in R.C.S. No. 108/2015 below Exh. 118. The application filed by the present petitioner, defendant in the suit, for framing point of limitation is rejected by the Trial Court.

2. Copy of plaint is produced on record and it shows that relief of declaration is made that the plaintiff has easementary right to use the common bandh as a way as he has been using this portion as a way for many generations and then, the relief of injunction is claimed to prevent defendants from interfering in exercise of the right to use that common bandh as a way. The learned counsel for petitioner submitted that in the past, in the year 2006 Rasta Case was filed u/s. 5 of the

Mamlatdar Courts Act, 1908 and plaintiff lost in that matter and so, the matter is already decided and further, if the matter was decided against the plaintiff the cause of action had arisen in the year 2006 itself and so, the relief claimed in the suit cannot be granted by the Trial Court. The point of limitation needs to be considered as a separate issue.

3. The aforesaid contentions show that there is some misconception. When the suit is filed for declaration that the plaintiff has acquired easementary right of way, such suit needs to be filed only after completion of 20 years of use of such road and prior to that, such suit cannot be filed. Further, the decision given by the Trial Court u/s. 5 of the Mamlatdar Courts Act is always subject to the decision of Civil Court and it cannot be said that due to the decision of Mamlatdar in the previous case under Mamlatdar Courts Act, the Civil Court cannot entertain such matter. Thus, there is no need of framing limitation point as issue in such suit. The petition is dismissed.

[T.V. NALAWADE, J.]

SSC/