

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1757 OF 2016

Smt. Rajani Madhukar Rankhambe
And Ors.

...Petitioners

Versus

Sou. Muktabai Ramchandra Pund
And Ors.

...Respondents

....

Mr. Vishwajeet S. Kapse, Advocate for the Petitioners.
Mr. Girish R. Agrawal, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 21st APRIL, 2016

P.C.

1. Heard Mr. Vishwajeet Kapse, learned Counsel for the petitioners and Mr. Girish Agrawal, learned Counsel for respondent no.1, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 3.11.2015 passed by the learned Jt. Civil Judge, Junior Division, Niphad below Exhibit-1 in Regular Civil Suit No.186 of 2015. By that order, the learned trial Judge held that Civil Court has jurisdiction to entertain and try the suit.

3. Respondent no.1, hereinafter referred to as 'plaintiff', has instituted suit, *inter alia*, praying for declaration of his ownership over land admeasuring 99 Ares, more particularly shown in red colour in Map bearing no. Urgent/M.R. No. 2035/11, Niphad dated 18.2.2011; in the alternative for declaration that the plaintiff became owner by adverse possession; for perpetual injunction restraining the defendants from causing obstruction to the plaintiff's use and occupation of the suit property on the basis of orders dated 11.3.2013, 10.6.2013, 25.2.2015 and 30.9.2015 passed by (1) S.D.O., Niphad, (2) Additional Collector, Nashik, (3) Divisional Commissioner and (4) Hon'ble Minister for Revenue respectively.

4. During pendency of the suit, the plaintiff took out application under Order 39, Rule 1 of Code of Civil Procedure, 1908 (for short, 'CPC') for interim relief. The petitioners filed application under Order VII, Rule 11(d) read with section 9-A on the ground that in view of section 138 (4) of the Maharashtra Land Revenue Code, 1966 (for short, 'Code'), suit is not maintainable and Civil Court has no jurisdiction to entertain and try the suit. By the impugned order, the learned trial Judge rejected the application.

5. Mr. Kapse strenuously contended that on 5.2.2011 Deputy Superintendent of Land Records, Niphad, Nashik issued notice to the parties informing them that on 18.2.2011 measurement of Gat No.600 will be carried out. On 18.2.2011, measurement was carried out, survey was carried out and statements of the parties were recorded on 18.2.2011 and 24.3.2011. He submitted that notice was issued in proceedings initiated under Section 138(2) of the Code. On 11.3.2013 Sub Divisional Officer, Niphad allowed the application made by the petitioners and ordered recovery of possession of 0.99 Ares from the plaintiff as shown in violet colour in measurement Map bearing no. Urgent/M.R.No. 2035/11, Niphad dated 18.2.2011. Aggrieved by that decision, the plaintiff preferred Appeal before the Additional Collector, Nashik. Appeal was dismissed on 10.6.2013. Aggrieved by these decisions, the plaintiff preferred Revision Application before the Additional Divisional Commissioner, Nashik. By order dated 28.3.2014, the Additional Divisional Commissioner, Nashik partly allowed the Revision Application and set aside orders dated 11.3.2013 and 10.6.2013 and remitted the matter to the Sub-Divisional Officer, Niphad for *de novo* enquiry.

6. Aggrieved by this decision, the petitioners preferred Review Application under section 258 of the Code before the Additional Divisional Commissioner, Nashik. On 25.2.2015, Review Application was allowed and orders dated 11.3.2013 and 10.6.2013 were restored by setting aside the order dated 28.3.2014 passed by the Additional Divisional Commissioner. Aggrieved by that decision, the plaintiff preferred Revision Application before the State Government. By order dated 30.9.2015, the Revision Application was dismissed by the State Government. It is only thereafter the plaintiff instituted suit in October, 2015.

7. Mr. Kapse relied upon Section 138(4) of the Code to contend that suit is clearly barred by limitation. Section 138(4) lays down that where any person has been ejected or is about to be ejected from any lands under the provisions of sub section (2), he may, within a period of one year from the date of the ejectment or the settlement of the boundary, institute a civil suit to establish his title thereto. He submitted that the plaintiff ought to have instituted suit within a period of one year from the date of order dated 11.3.2013 passed by S.D.O, Niphad. In short, he submitted that as the plaintiff has instituted suit in

October, 2015, after the decision of the State Government dated 30.9.2015 the suit is barred by limitation. He further submitted that by prayer clause (b), the plaintiff has claimed declaration of title of ownership on the basis of adverse possession. In view of the decision of the Apex Court in the case of **Gurdwara Sahib Vs Gram Panchayat Village Sirthala, (2014) 1 Supreme Court Cases 669**, the said prayer also cannot be granted by the Civil Court.

8. Mr. Kapse relied upon following decisions:

- [i] **Dhruv Green Field Ltd. vs. Hukam Singh and others, (2002) 6 SCC 416,**
- [ii] **Vankamamidi Venkata Subba Rao vs. Chatlapalli Seetharamaratna Ranganayakamma, (1997) 5 SCC 460,** and in particular paragraph-15 thereof; and
- [iii] **Nago Hari Zangte and others vs. State of Maharashtra and others, 2015(3) Mh.L.J. 381,**

to contend that the plaintiff, having exhausted remedy of appeal and revision under the Code, is precluded from instituting the suit. He submitted that the order of the SDO was passed on 11.3.2013. In terms of sub-section (4) of Section 138 of Code, the plaintiff ought to have instituted the suit within one

year. Admittedly, the suit is instituted in or about October, 2015. The suit is, therefore, clearly barred by limitation.

9. On the other hand, Mr. Agrawal relied upon Section 138(4) and (5) of the Code to contend that if a suit is instituted challenging the order passed under section 138(2) of the Code, then he is precluded from filing appeal or revision. If any person has been ejected or is about to be ejected from land, institutes appeal or revision, then he is not precluded from filing suit after decision in appeal or revision. In the present case, the order of the State Government was passed on 30.9.2015. In the order itself, liberty was reserved to the plaintiff to institute the suit.

10. Mr. Agrawal invited my attention to the order passed by Hon'ble Minister for Revenue and in particular paragraphs-36 and 38 thereof to contend that the Hon'ble Minister recorded that the plaintiff has raised the issue of ownership. Revenue Officer has no power to decide the ownership issue. The plaintiff has to approach the Civil Court for establishing his title. Mr. Agrawal invited my attention to paragraphs-2 and 6 of the plaint wherein the plaintiff asserted that he became owner of

the property described in paragraph-1 of the plaint on the strength of two sale deeds. In paragraph-6, the plaintiff has challenged the orders on various grounds of violation of principles of natural justice. Even on this count, the suit instituted in the Civil Court is maintainable. He also invited my attention to paragraph-9 of the plaint. In paragraph-9, the plaintiff asserted that the Circle Officer, Lasalgaon has issued notice dated 30.10.2015 through the Tahsildar, Niphad intimating that on 4.11.2015 possession will be taken. Relying on section 138(4) of the Code, he submitted that the suit has to be instituted within a period of one year from the date of ejectment or settlement of boundary. In the present case, notice was issued on 30.10.2015 for ejecting the plaintiff on 4.11.2015 and as such the suit is within the period of limitation of one year as contemplated by sub-section (4) of Section 138 of the Code. He also relied upon the decision of this Court in the case of ***Jaglal s/o Premlal Jayaswal & Anr. vs. Waman s/o. Shyamraoji Dhobale & Anr., 2008(4) ALL MR 335*** and in particular paragraphs-8 and 9 thereof.

11. I have considered rival submissions advanced by

learned Counsel appearing for the parties. I have also perused the material on record.

12. As noted earlier, the plaintiff has instituted the suit *inter alia* for declaration of ownership over land admeasuring 0.99 Ares and in the alternative for declaration that the plaintiff became owner by adverse possession, amongst other prayers.

Section 138 of the Code reads thus :

“138. Effect of settlement of boundary.-(1)

The settlement of a boundary under any of the foregoing provisions of this Chapter shall be determinative-

- (a) of the proper position of the boundary line or boundary marks, and
- (b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

(2) Where a boundary has been settled as aforesaid the Collector may at any time summarily evict any landholder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

(3) An order of ejectment under sub-section (2) 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) Where any person has been ejected or is about to be ejected from any lands under the provisions of sub-section (2), he may, within a period of one year from the date of the ejectment or the settlement of the boundary, institute a civil suit to establish his title thereto:

Provided that, the State Government or the Collector, or any revenue or survey officer as such, shall not be made a party to such suit.

(5) Where a civil suit has been instituted under sub-section (4) against any order of ejectment, such order shall not be subject to appeal or revision.

(6) The Collector may at any time make an order for redistribution of land revenue which, in his opinion, should be made as a result of the decision of the appeal or revision, or as the case may be, the suit, and such redistribution shall take effect from the beginning of the revenue year following the date of the order.”

13. It is no doubt true that on 11.3.2013, the Sub-Divisional Officer had passed an order directing the plaintiff herein to hand over possession of 0.99 Ares as shown in violet colour in measurement map bearing No.Urgent/M R. No. 2035/11, Niphad dated 18.2.2011. Aggrieved by that decision, the plaintiff preferred appeal under Section 247 of the Code before the Additional Collector, Nashik. On 10.6.2013, Additional

Collector dismissed the appeal. Aggrieved by this decision, the plaintiff preferred Revision Application No.317/2013 before the Additional Divisional Commissioner, Nashik Division. By order dated 28.3.2014, Revision Application was partly allowed and the orders dated 11.3.2013 and 10.6.2013 passed by SDO, Niphad and Additional Collector respectively were set aside and the matter was remitted for *denovo* enquiry. Aggrieved by that decision, the petitioners herein instituted Review Application under Section 258 of the Code. On 25.2.2015, Additional Divisional Commissioner, Nashik allowed the Review Application and set aside the order dated 28.3.2014 passed by the Additional Divisional Commissioner and restored the orders passed by SDO, Niphad and Additional Collector. Against that decision, the petitioner preferred revision application under Section 257 of the Code before the Hon'ble Minister (Revenue), Maharashtra State. By order dated 30.9.2015, the Hon'ble Minister dismissed the Revision Application and confirmed the order of Additional Commissioner dated 25.2.2015. Perusal of paragraphs-36 and 38 shows that the Hon'ble Minister recorded a finding that the plaintiff has raised the issue of ownership rights and the Revenue Officer has no authority to decide the

ownership rights and it is, therefore, necessary for the plaintiff to approach the Civil Court as per Section 138(4) of Code. In paragraph-38, the Hon'ble Minister observed that the plaintiff has to approach the Civil Court for establishing his ownership rights.

14. Perusal of paragraph-9 of the plaint shows that the plaintiff has referred to various orders passed by the revenue authorities as also issuance of notice dated 30.10.2015 by Circle Officer, Lasalgaon intimating the plaintiff that the possession of .99 Ares will be taken on 4.11.2015. The plaintiff has instituted suit in October, 2015 that is to say immediately after receipt of notice dated 30.10.2015.

15. Section 138(4) of the Code lays down that within a period of one year from the date of ejectment or the settlement of the boundary dispute, any person who has been ejected or is to be ejected from any land has to institute a civil suit to establish his title. In view thereof, the submissions advanced by Mr. Kapse that as the suit is not instituted within a period of one year from the order of the S.D.O. cannot be accepted. That apart, the order of the S.D.O. was subject to appeal and

revision. After exhausting these remedies as also in view of finding recorded in paragraphs-36 and 38 of the order passed by Hon'ble Minister for Revenue, the plaintiff has instituted the suit for declaration of ownership. On this count also it must be said that the suit is not barred by limitation.

16. Mr. Kapse submitted that the plaintiff having exhausted the remedy of appeal and revision, is precluded from instituting the suit. Perusal of sub-section (5) of Section 138 of the Code shows that where a civil suit has been instituted under sub-section (4) against any order of ejectment, such order is not subject to appeal or revision. In other words, if party has already invoked the jurisdiction of civil court by instituting a suit, in that event that party is precluded from filing appeal or revision. However, Section 138 of Code does not preclude institution of the suit after exhausting remedy of appeal or revision. Apart from that in paragraph-6 of the plaint, the plaintiff has challenged the orders for non-compliance of the principles of natural justice.

17. Mr. Kapse relied upon the decision of Apex Court in the case of **Vankamamidi Venkata Subba Rao (supra)** and in

particular paragraph-15 thereof. In fact, paragraph-15 thereof supports the contention advanced by Mr. Agrawal. In paragraph-15, the Apex Court, has observed as under :

“15. This Court in Vatticherukuri Village Panchayat v. Nori Venkatarama Deekshithulu, 1991 Supp (2) SCC 288, after considering the entire case law, had held that the civil Court has no jurisdiction to go into the correctness of the patta granted by the Settlement Authorities. Under Section 9 CPC, the Courts shall, subject to the provisions contained therein, have jurisdiction to try all suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil Court would take cognizance of it. Therefore, the normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The Rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by rule of law and jurisdiction of the Civil Courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded. However, in the development of civil adjudication of civil disputes, due to pendency of adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of disputes with less expensive but expeditious disposal. It is

settled legal position that if a Tribunal with limited jurisdiction cannot assume jurisdiction and decide for itself the dispute conclusively, in such a situation, it is the Court that is required to decide whether the Tribunal with limited jurisdiction has correctly assumed jurisdiction and decided the dispute within its limits. It is also equally settled that when jurisdiction is conferred on a Tribunal, the Courts examine whether the essential principles of jurisdiction have been followed and decided by the Tribunals leaving the decision on merits to the Tribunal. It is also equally settled legal position that where a statute gives finality to the orders of the special Tribunal, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil Court would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental Principles of judicial procedure. ”

18. Mr. Kapse also relied upon the decision of **Dhruv Green Field Ltd. (supra)**. In that case, sections 10-A and 13 of the Punjab Village Common Lands (Regulation) Act, 1961 fell for consideration. Section 10-A invested power on Assistant Collector of First Class Grade in Haryana to call for record of any sale, lease, contract or agreement entered into by the Panchayat in respect of any land vested or deemed to be vested

in it. Section 13(b) laid down that no civil Court shall not have the jurisdiction in respect of any matter which any Revenue Court, officer or authority is empowered by or under the Act to determine. After considering provisions under Section 10-A and 13, the Apex Court observed in paragraph-16 that the jurisdiction of the Civil Court to entertain and adjudicate the question was clearly barred. It was further observed that grant of lease impugned therein might be termed as illegal but it cannot be said to be a nullity. In view thereof, the decisions relied by Mr.Kapse in the cases of **Vankamamidi Venkata Subba Rao (supra)** and **Dhruv Green Field Ltd. (supra)** do not advance the case of the petitioners.

19. Mr. Kapse also relied upon the decision of **Nago Hari Zangte (supra)**. In that case, the suit instituted by the petitioners therein was dismissed albeit on the ground that it was barred by limitation. Learned Single Judge considered the provisions of Section 143(4) & (5) of the Code and observed that once the suit was instituted, the bar created under Section 143(4) of the Code for filing appeal or revision will not apply. In my opinion, the said decision is also not applicable.

20. In the light of the aforesaid discussion, I do not find that the learned trial Judge has committed any error in passing the impugned order. Perusal of application under Section 9-A of CPC in fact shows that the petitioners herein did not agitate that the suit is barred by limitation. It was merely contended that the Additional Collector decided the appeal on 10.6.2013 and within one year therefrom the plaintiff has not instituted the suit. For all these reasons, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. Needless to say that it will be open to the petitioners to raise issue of limitation in the written statement. If such contention is raised, the learned trial Judge will frame one of the issues as regards limitation and try that issue along with other issues. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)