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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 592 OF 2017

Nimba Daga Patil,
Age: 74 years, Occu: Agriculture,
R/o. Tamaswadi, Taluka Parola,
District Jalgaon

..APPELLANT
(Orig.Plaintiff)

VERSUS

1. Gulab Asaram Patil,
Age: 59 years, Occu: Agriculturist,
R/o. Tamaswadi,
Taluka Parola,
District Jalgaon

2. Dattatray Shankar Dhobi,
Age: 64 years, Occu: Agriculturist,
R/o. Tamaswadi,
Taluka Parola,
District Jalgaon

3. The Tahsildar, Parola,
Taluka Parola,
District Jalgaon

4. The Collector, Jalgaon,
Office of Collector, Jalgaon,
Dist. Jalgaon

..RESPONDENTS
(Orig.defts)

Mr Girish S. Rane, Advocate for appellant;
Mr B. R. Warmaa, Advocate for respondent Nos. 1 & 2;
Mr C. V. Dharurkar, A.G.P. for respondent/State

CORAM : NITIN W. SAMBRE, J.

DATE : 18th September, 2017

ORAL ORDER

Against the judgment and decree in Regular Civil Suit No.113 of 2012, the present appellant filed Regular Civil Appeal No. 15 of 2014

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before the learned District Judge-1, Amalner, which was dismissed vide judgment and decree dated 3rd August, 2016, as not maintainable. As such this second appeal.

2. Having heard respective Counsel for sometime, it is noticed that the lower appellate Court has committed an error in observing that since the suit was filed pursuant to the provisions of Sub-section 4 of Section 143 of the Maharashtra Land Revenue Code, 1966 ('Code' for sake of brevity) in such an eventuality, appeal shall not lie.

3. The provisions of Section 143 of the Maharashtra Land Revenue Code, 1966 reads 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.

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(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.”

4. The said provisions are incorporated in the Statute Book with an intention to provide immediate provisional remedy to the person holding the land and claiming the right of way over the boundaries of other Survey numbers. The Act does not prescribe that the order passed is final as same is made subject to the decision in an appeal and revision as provided under the Maharashtra Land Revenue Code. The provisions incorporated in the Statute Book empowers Tahsildar to immediately redress the grievance of the cultivators so that he can access to their field and carry out his cultivation activity.

5. The Section does not contemplate that the order of the Tahsildar attains finality qua the statute as the Section 143(4) provides that cultivators/persons aggrieved by the decision of the Tahsildar, within a period of one year may initiate civil suit questioning such order with a prayer for either to set aside or modification of the order of Tahsildar. The said remedy is provided in the Code with an intention to give opportunity to

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aggrieved party to establish his case by adducing proper evidence in the backdrop of his pleadings in the suit and can produce oral and documentary evidence in support of such claim for setting aside or modification of the order of the Tahsildar in a suit.

6. Section 143 (5) of the Code further provides that such suit, if instituted questioning the decision of the Tahsildar by the aggrieved person, the decision of Tahsildar is not subject to an appeal or revision meaning thereby appeal or revision as provided under the MLR Code as referred in sub-section 3. It cannot be read and interpreted out of context to mean appeal or revision under Code of Civil Procedure. There is one more reasons for drawing such conclusion i.e. "appeal or revision" is already referred to in Sub-section 3. Such appeal or revision against the order of Tahsildar is a remedy prescribed under the MLR Code and not under the Code of Civil Procedure.

7. It is by virtue of above scheme of Section 143, the party who approaches Civil Court questioning the decision of Tahsildar under Sub-section 4, the person aggrieved by the judgment delivered in such civil suit, has statutory right to prefer an appeal under Section 96 and further right of filing second appeal under Section 100 of the Code of Civil Procedure. Once the remedy of filing of suit is in-built in the provisions as noticed in Sub-section 4 of Section 143 of the MLR Code, the appeals, being first and second appeal under Sections 96 and 100 respectively of the Code of Civil Procedure, being continuation of the suit has to be held to be very much available to the aggrieved party to the suit.

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8. There is one more reason as could be inferred from the scheme of Section 143 so as to draw inference that order passed by the Tahsildar is subject to civil proceedings for the reason that the remedy before the Tahsildar is provisional remedy so as to immediately redress the need of cultivators seeking reasonable access to their field from the boundaries of other Survey numbers. The scheme of Section further provides that such order is required to be honoured by the respective parties to the proceedings. However, it must be clarified here that it is not the intention of legislature as could be gathered from the language of Section 143 of the MLR Code to provide two remedies to the same aggrieved person viz. appeal and revision under Section 143(3) and also civil suit.

9. The fact remains that while recording findings by the Tahsildar what is contemplated under sub-section 1 of the Section 143 is, Tahsildar may upon receipt of such claim for right of access, conduct enquiry and decide the claim to the extent of right of way over the boundaries of other Survey numbers. Sub-section 1 of Section 143 does not contemplate the full-fledged enquiry as provided in the suit, viz. pleadings of the parties and recording of evidence, etc. As such, what could be inferred is such order of the Tahsildar unless questioned, the parties are required to honour the same.

10. In the wake of above referred observations, it has to be held that the order of the learned District Judge dated 3rd August, 2016, dismissing the

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Civil Appeal No.15 of 2014, holding that the provisions of appeal is not available to the aggrieved person pursuant to Sub-section 4 and 5 of Section 143 of the Code, is contrary to the scheme of the Act and as such, is not sustainable.

11. As such, the impugned judgment is set aside.

12. Since, the appellate Court has not appreciated the claim of the respective parties on merit, it will be appropriate to relegate the parties to the appellate Forum, viz. learned District Judge. The learned District Judge is directed to hear and decide the appeal expeditiously as the parties hereto agree to appear before the learned District Judge on 13th November, 2017.

The appellant undertakes to file paper book before the appellate Court within a period of six weeks from the date of appearance.

Parties to co-operate the appellate Court in deciding the appeal expeditiously, in any case, within a period of twelve weeks from the date of submission of the paper book.

The Second Appeal, as such, stands allowed in above terms.

(NITIN W. SAMBRE, J.)