

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

CIVIL REVISION APPLICATION NO. 597 OF 2017

Mithu Kondiram Bibe & Ors.	...	Applicants
V/s.		
Rambhau Sitaram Nevage & Ors.	...	Respondents

- Mr.Sugandh B. Deshmukh for the Applicants.
- Mr.A.R. Patil, Addl. Govt. Pleader for Respondent Nos.3 to 5.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 29th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicants and learned Addl. Government Pleader for Respondent Nos.3 to 5.

2] By this Civil Revision Application, the Applicants are challenging the legality, validity and propriety of the order dated 29th April 2017 passed by the Civil Judge Senior Division, Niphad, below Exhibit-30 in Regular Civil Suit No.154 of 2016.

3] The application at Exhibit-30 was filed by the Applicant herein, who is Defendant No.1 before the trial Court for rejection of the plaint under Order-7 Rule-11 of Code of Civil Procedure (for short "C.P.C.") on the count that the suit is not filed within a period of one

year from the date of measurement and settlement of the boundaries. Secondly, the suit is also not filed for establishing the title and therefore, the bar of Section 138 of the Maharashtra Land Revenue Code, 1966 comes into play and on that count, the suit is not tenable. Further, it was submitted that the Respondents-Plaintiffs has also joined the Collector, the Revenue Officer and the Survey Officer as party to the suit, though they cannot be joined in such suit and hence on the count also the plaint is liable to be rejected.

4] The trial Court, however, dismissed this application and hence the instant Civil Revision Application.

5] In order to appreciate the submission advanced by learned counsel for the Applicants, it would be necessary to consider the Provisions of Section 138 of the Maharashtra Land Revenue Code, 1966, which are reproduced for ready reference as follows:

“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.”

6] Sub-Section (2) of Section 138, thus, provides that, where the boundary has been settled by the Collector, as per the provisions of Sub-Section (1) of Section 138, the Collector may, at any time, summarily evict any land holder, who has wrongfully been in possession of any land, which has been adjudged in the settlement of boundary not to appertain to his holding. Sub-Section (3) of the said Section provides that, against an order of ejectment, there will be an Appeal and Revision in accordance with the provisions of the Code. However, it will be subject to the provisions of Sub-Section (4) and (5). Sub-Section (4) is important, which lays down the period of limitation. According to the Sub-Section (4), if any person has been ejected or is about to be ejected, then he may file a suit within a period of one year from the date of ejectment or from the date of settlement of boundary to establish his title thereto.

7] In the instant case, it may be true that the measurement had taken place and boundaries were settled on 14th October 2014. However, as rightly observed by the trial Court, the notice of ejectment is issued on 18th May 2016 and therefore, as the suit is filed within 1 year from the date of ejectment notice, at this stage, it cannot be said

that the suit is barred by limitation.

8] As regards the contention that the Respondent has to institute a Civil Suit to establish his title thereto, it may be true that in the prayer Section, Respondent has not specifically claimed the relief of declaration of his title. However, the averments made in the plaint are required to be read in totality. In paragraph No.10, he has clearly stated that he has the owner and is in possession of the suit property since last 25 years. He has also sought therefore, the declaration that the ejectment notice issued is not correct and on the basis of the same his possession should not be disturbed. Therefore, it cannot be said that, he is claiming the relief on any other ground except that of, for establishing his title. Hence, at this stage, at-least, it cannot be said that the suit is not maintainable.

9] The next contention raised is that the remedy was available to Respondent/Plaintiff to file an Appeal or Revision before the Appropriate Authority, hence suit cannot be maintainable. However, the provisions of Sub-Section (3) are very clear to the effect that, only when order of ejectment is passed, it can be subject to Appeal and Revision in accordance with the provisions of the Maharashtra Land Revenue Code, 1966, however, it is subject to the provisions of Sub-Sections (4) and (5). Sub-Section (4), as already

stated, provides the remedy of filing the Civil Suit. The Respondent has availed the remedy of filing the suit. Hence, it cannot be said that as there is provision for appeal and Revision also, the suit is not tenable.

10] The last contention raised is about the joinder of the Collector, Revenue Officer and Survey Officer in the suit which is against the proviso to Sub-Section (4) of Section 138 which lays down that they shall not be made party to such suit. In my considered opinion, even assuming that their joinder in the suit is not correct, on that count, the suit itself cannot be dismissed or held to be not-maintainable, so as to reject the plaint under Order-7 Rule-11 of C.P.C., at-least on the application made by Respondent herein. If such application for rejection of the plaint was made by the Collector or Revenue Officer or Survey Officer, on this ground, then that prayer could have been considered, but on the request of the present Applicants.

11] As a result, the Civil Revision Application holds no merit, hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]