

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

WRIT PETITION NO. 4329 OF 2014

1. Sachin s/o Ashok Patil,
Age: 27 years, Occu: Agril.,
R/o Patil Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
2. Anil s/o Ashok Patil,
Age: 29 years, Occu: Agril.,
R/o as above.
3. Sunil s/o Ashok Patil,
Age: 33 years, Occu: Agril.,
R/o as above.
4. Godawari w/o Ashok Patil,
Age: 50 years, Occu: Agril & Household,
R/o as above.
5. Ashok s/o Pundlikrao Patil,
Age: 52 years, Occu: Agril.,
R/o as above.

...PETITIONERS.

Versus

1. The State of Maharashtra
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
2. The Sub-Divisional Officer,
Udgir, Tq. Udgir, Dist. Latur.
3. Panditrao s/o Pundlikrao Patil,
Age: 54 years, Occu: Agril.,
R/o Patil Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
4. Balaji S/o Vinayakrao Paitl,
Age: 40 years, Occu: Agril.,
R/o as above.

...RESPONDENTS.

...
Mr. Jayant R. Patil, Advocate for petitioners.

Mr. S.N. Morampalle, AGP for respondent Nos.1 and 2.

Mr. P.R. Katneshwarkar, Advocate for Respondent Nos. 3 and 4.

CORAM : T.V. NALAWADE, J.
DATED : 14/02/2019

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge the decision of Sub Divisional Officer (S.D.O.) in proceeding No.2013/ROR/A/75 decided on 25.7.2013. This proceeding was filed by respondents Panditrao and Balaji to challenge the order made by the learned Tahsildar under section 5 of the Mamlatdar's Courts Act, 1906. The proceeding was filed by Panditrao and Balaji before Mamlatdar for removal of obstruction created on their way situated between land Survey No. 140 on one side and 141 and 142 on other. After making enquiry and after considering the panchanama, the Tahsildar had dismissed the application. Tahsildar had held that dispute was of the such nature that it was desirable for parties to approach Civil Court. On the other hand, the learned S.D.O. has held that the document like partition deed ought to have been considered by the Tahsildar and the matter is remanded back by S.D.O. to Tahsildar.

3) The submissions made and the record show that the petitioner and Panditrao are real brothers inter-se. In partition document, it was mentioned that a cart way was to be left between aforesaid survey numbers for the use of these brothers. That agreement was signed in the year 1986. The record of enquiry shows that when the panchanama was made on 29.11.2012, it was noticed that right on the common Bandh of these lands there were many trees and foot paths were in existence on both the sides of these trees. The age of the trees was given as approximately 12 years.

4) The provision of section 5 of Mamlatdar's Courts Act and particularly section 5 (1)(b) and proviso to sub-section (1)(b) is as follows :-

"5. (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be fixed by the State Government,-

(a).....

(b) to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural

purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner:

Provided than, if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or, to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitable dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal."

The purpose behind the provision of section 5 is mainly to see that there is no interference in the use of public at large and in relation to few things mentioned in clause (b), disputes of private nature, can be considered. In the present matter, there is dispute with regard to the use of some portion lying between the aforesaid survey numbers

as cart way. The common Bandh is to be used as cart way as per the contention of the plaintiff before Mamlatdar. In ordinary course, common Bandh is to be treated as boundary mark which demarcates two survey numbers and that needs to be created and maintained as per the provisions of Maharashtra Land Revenue (Boundaries and Boundary Marks) Rule 1969. In the present matter, it appears that the dispute was raised after more than 12 years by the plaintiff before Mamlatdar. This circumstance also needs to be kept in mind. Due to these circumstances, Tahsildar has refused to pass the order under section 5 of the Mamlatdar's Courts Act. Only because there was agreement of 1986 of aforesaid nature, Tahsildar was not expected to act on it and enforce the civil right shown to be created in that agreement. It will be proper if possible in law that Civil Court decides the dispute. This Court holds that it was not proper on the part of S.D.O. to remand the matter back to the Tahsildar. It will be open to the plaintiff before Mamlatdar to approach the Civil Court and if it is permissible now in law, the Civil Court may decide the said dispute. In the result, the petition is allowed. The order of S.D.O. is quashed and set aside. The order of Tahsildar is restored. Rule is made absolute in those terms.

[T.V. NALAWADE, J.]

ssc/