

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2742 OF 2019**

Shri Vijay Yashwant Mane
and Others

..... Petitioners.

V/s

Shri Jyotiram Krishnaro Mane
and Others

..... Respondents.

Mr. Prathamesh B. Bhargude for the Petitioner.

Mr. Kirankumar J. Phakade for Respondent Nos. 1 to 5.

Mr. A.B. Kadam, AGP for Respondent Nos. 6 and 7.

CORAM: NITIN W. SAMBRE, J.

DATE: 24th July, 2019

P.C.:-

1] Heard by consent of parties for final disposal at the admission stage.

2] A plaint under section 5 of the Mamlatdar's Courts Act came to be rejected against which, Revision before Sub-Divisional Officer is allowed by the order impugned passed on 29/1/2019. As such, this Petition.

3] The submissions are, in the plaint, cause of action is spelt out based on incident of encroachment carried out by the Respondents in the month of May, 2016, whereas the plaint was presented on 4/3/2017. Relying on the provisions of sub-section (3) and sub-section (4) of Section 5 of the Mamlatdar's Courts Act, learned Counsel for the Petitioners submits that very claim is barred by limitation. According to the learned Counsel for the Petitioners, the issue is already decided by the judgment of this Court in the matter of *Vishnu Sukhdev Ghanvat and Others vs Collector, Ahmednagar and others*¹.

4] The submissions are countered by the learned Counsel for the Respondent Nos. 1 to 5 by pointing out that, what was pleaded in the plaint is continuous cause of action and that being so, plaint at the behest of the Respondent Nos. 1 to 5 is very much maintainable. According to him, since the authority has not recorded any finding of fact on the said issue, the matter was remanded.

5] Considered the rival submissions.

¹ 2017(7) Bom.C.R.403

6] In para 5 of the plaint preferred by the Respondent Nos. 1 to 5 before the Mamlatdar, categorical pleadings are made that the cause of action accrued in the month of May, 2016. Subsequent allegations in continuation to the said cause of action are that the assurances have been given by the Petitioners to remove the said encroachment and it is upon failure, plaint came to be presented. Upon perusal paras 5 and 6 of the pleadings, what is noticed is, the plaint was never preceded with private notice or lawyer's notice to the petitioners herein. As such, even if this Court goes by pleadings in support of the cause of action, it appears that the plaint was presented beyond the period of six months from the date the cause of action has accrued to the Respondents i.e. May 2016.

7] Apart from above, the fact remains that the findings recorded in the proceedings in question lacks originality and that being so, such findings by either of the authorities under the Mamlatdar's Courts Act, are subject to final outcome of any civil proceedings.

8] In the aforesaid background, writ petition is allowed in terms of prayer clause (a) with liberty to the Respondent Nos. 1 to 5 to initiate the suit/proceedings before the competent civil court for the cause alleged in the plaint under Section 5 of the Mamlatdar's Courts Act.

(NITIN W. SAMBRE, J.)