IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 791 OF 2017

ALONGWITH
CIVIL APPLICATION NO. 1558 OF 2017

Mr. Parashram Babu Dalvi .....Appellant
V/s.
The State of Maharashtra (Thru)
Collector, Sangli ....Respondent

* * * *

Mr. Vijay Killedar, Advocate for the appellant.

Ms. Tanya Goswami I/by. AGP for the respondents no.1 and 2.

Mr. P.D. Pise, Advocate for respondent no.3.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 15th January, 2019.

P.C. :

1. Heard learned Counsel for the parties.

2. The Tahsildar, Miraj passed an order on 24th February, 2014 under Section 143 of the Maharashtra Land

Revenue Code, 1966 at the instance of Sangappa Ramchandra Lokhande (who is respondent no.3 in the present Appeal). Vide said order, the application filed by Sangappa Lokhande was allowed. In the said proceedings, the present appellants were respondents no.4 and 5. Against the order of the Tahsildar, Appeal was preferred before the Sub-Divisional Officer, Miraj by affected persons amongst whom appellant no.1 herein was one of the appellants. Appellant no.2-Vilas was the respondent in the said appeal before the Sub-Divisional Officer, Miraj. On 20th April, 2015, an application was filed by appellant no.1 to withdraw the Appeal before the Sub-Divisional Officer, Miraj. By order dated 12th May, 2015 Parshuram Dalvi (appellant no.1 herein) was permitted to withdraw the appeal. On the very day, Parshuram Dalvi and Vilas Babu Dalvi had filed a suit, being Regular Civil Suit No. 178 of 2015 in the Court of 2nd Joint Civil Judge Senior Division, Sangli and challenged the order of the Tahsildar dated 24th December, 2015.

3. The trial Court, as well as, the First Appellate

Court held that the suit was barred by limitation in view of the provisions of Section 143 of the Maharashtra Land Revenue Code. The provisions read as under :

"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.

(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 decisions shall not be subject to appeal or revision.”*

4. The Courts below thus held that, the suit ought to have been instituted within one year from the date of the decision of the Tahsildar. In this case, the Tahsildar rendered its decision on 24th February, 2014 and therefore the last date for challenging the said order by filing suit was 26th February, 2018. Admittedly, the suit was filed on 20th April, 2014 which was beyond the period of limitation under Section 143(4) of the Maharashtra Land Revenue Code, 1966. On this ground, the Courts below held that the suit was not within limitation.

5. The learned Counsel for the appellant has urged that the provisions of Section 12(4) of the Limitation Act were not appreciated by the Courts below. He would submit that while computing the period of limitation, time requisite

for obtaining the copy of the impugned order is required to be excluded. He would submit that, the applicants had applied for certified copy of the order of the Tahsildar on 23rd February, 2015 and received the same on 2nd May, 2015. It is submitted that the period between the application for certified copy and the receipt of the same is required to be excluded while computing the period of limitation. I do not accept the submissions for the simple reason that the last date for challenging the order of the Tahsildar by, suit was 25th February, 2015. It is not in dispute that the appellant had filed Appeal as an alternate remedy. In view of this fact, the provisions of Section 14 of the Limitation Act would not assist the appellant, though it is argued by him. So far as the exclusion of period in terms of provisions of Section 12(4) of the Limitation Act is concerned, reliance placed thereon is misplaced, in as much as, he had filed a suit on 20th April, 2015, a date beyond the period of limitation. In view of this fact, the Appeal does not give rise to any substantial question of law. The Appeal is dismissed.

6. In view of dismissal of the Appeal, the Civil Application does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)