

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5330 OF 2017

Manik s/o Mahadeo Meshram, Agriculturist, Tidangi, Tah. Kalmeshwar, Dist. Nagpur

-vs-

Ramchandra s/o Balaji Ambole, Agriculturist, Tidangi, Tah. Kalmeshwar, Dist. Nagpur and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Smt B. P. Maldhure, Advocate for petitioner.
Shri A. Ramteke, Advocate for respondent No.1.
Shri H. D. Dube, Assistant Government Pleader for
respondent Nos.2 and 3.

CORAM : A. S. CHANDURKAR, J.

DATE : November 04, 2019

The challenge raised in the present writ petition is to the order dated 01/07/2017 by which the trial Court has answered the preliminary issue as to jurisdiction to entertain the suit and also the aspect whether the suit is barred by limitation against the petitioner.

2. The respondent No.1 is the original plaintiff who claims interest in Khasra No.132/1. It is his case that part of Government land in Khasra No.133 is towards the Northern side of his field. A pandhan is being used by various cultivators to approach their fields. According to the plaintiff he is also using the same pandhan since long. Since it is his case that the defendant No.3 sought to obstruct his way he first approached the revenue Authority to seek correction of the relevant revenue map and thereafter on 30/04/2016 filed the aforesaid suit seeking various reliefs. The reliefs sought were with regard to declaration that the defendant No.3 had no right to obstruct the

plaintiff from using the Government land as his approach way. Further declaration of being the owner of the suit land and thus having a right of access was also sought. The plaintiff impleaded the Collector as well as the Superintendent of Land Records as defendants in the suit for seeking the relief of correcting the revenue map. Other ancillary reliefs were also sought in that suit. The defendant No.3 moved an application under Section 9 of the Code of Civil Procedure, 1908 praying that a preliminary issue with regard to jurisdiction of the civil Court be framed as according to the said defendant the suit was barred by limitation and the civil Court had no jurisdiction to entertain the same. The trial Court accordingly framed the preliminary issue. The parties led evidence on the preliminary issue and by the impugned order the trial Court has held that the suit was filed within limitation and the civil Court has jurisdiction to entertain the suit insofar as some of the reliefs claimed were concerned. Being aggrieved the defendant No.3 has filed the present writ petition.

3. Smt B. P. Maldhure, learned counsel for the petitioner submitted that considering the plaint averments the civil Court had no jurisdiction to grant the relief with regard to correcting the revenue map and also granting a declaration that the plaintiff had the right to access his field from the way as proposed. Referring to various averments in the plaint it was submitted that even according to the plaintiff the cause of action arose initially on 29/07/2012. The suit having been filed on 30/04/2016 was barred by limitation in the light of provisions of Article 58 of the Limitation Act, 1963 (for short, the said Act).

It was necessary to have filed the suit within three years from 29/07/2012 as the cause of action first accrued on that day. The trial Court by recording a finding that the cause of action was continuous erroneously held the suit to be within limitation. It was therefore submitted that the trial Court erred in answering the preliminary issue in favour of the plaintiff.

4. On the other hand Shri A. Ramteke, learned counsel for the plaintiff supported the impugned order. He submitted that all reliefs sought in the suit could not be claimed before the revenue Authority. The civil Court had jurisdiction to consider the prayer made in the plaint. He further submitted that merely because it was stated in the plaint that the cause of action initially arose on 29/07/2012 it would not mean that the suit was liable to be filed within three years from the said date. Moreover the question that the suit was actually barred by limitation or not was a mixed question of law and fact and the entire evidence was required to be taken into consideration. He therefore submitted that as the cause of action was continuous there was no reason to interfere with the impugned order.

5. I have heard the learned counsel for the parties and I have perused the pleadings in the plaint. In paragraph 10 of the plaint it has been pleaded that the cause of action initially arose on 29/07/2012 after which it is pleaded that the same was continuous in nature. Reference is made to the further cause of action having arisen on 24/08/2015 and thereafter on 31/10/2015. In this regard though a preliminary issue as to

limitation had been framed by the trial Court it is found that the question of limitation is a mixed question of law and fact. Whether the provisions of Article 58 of the said Act are applicable or whether the cause of action is continuous in nature is an aspect which will be required to be considered in the light of entire evidence on record. At this stage it would not be possible to conclude the aspect of limitation in either way. The issue of limitation therefore can be kept open for being tried with all other issues.

6. In so far as the bar of jurisdiction of the civil Court under Section 11 of the Maharashtra Revenue Jurisdiction Act, 1876 is concerned, the trial Court in paragraph 24 of the order has clearly observed that with regard to reliefs which cannot be granted by civil Court, the same could not be a reason to reject the plaint. As some of the reliefs can only be considered by the civil Court the suit has been found to be maintainable. If ultimately it is found that the civil Court has no jurisdiction to grant some of the prayers in the plaint that aspect can be taken in to consideration when the suit is finally decided. At this stage it is not necessary to conclude said aspect.

7. In that view of the matter except for clarifying that the question of limitation would not stand concluded finally by virtue of the order dated 01/07/2017 and with a direction to the trial Court to frame the issue with regard to limitation as well as the reliefs which can be considered by the civil Court, it is not necessary to interfere with the impugned order. It is clarified that observations made in the impugned order shall not

weigh with the trial Court when the issue of limitation is finally decided. All contentions in that regard are kept open. The proceedings in the suit are expedited.

The Writ Petition is disposed of in aforesaid terms with no order as to costs.

JUDGE