

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4908 OF 2021**

Sau. Kantabai Sopan Bhatuda & Ors.

...Petitioners

V/s.

Shri. Bansilal Runjhaji Devhadrao (deceased)
through legal heirs & Ors.

...Respondents

Mr. Girish R. Agrawal for Petitioners.

Mr. P. P. Pujari, AGP for State.

CORAM : G. S. KULKARNI, J.

DATE : OCTOBER 27, 2021

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1. Heard Mr. Agrawal, learned counsel for the petitioners and Mr. Pujari, learned AGP for the State.

2. The challenge in this petition is to an order dated 14 June, 2021 passed by the Sub-Divisional Officer, Yeola on a revision (RTS) filed by the petitioners under Section 23(2) of the Mamlatdars' Courts Act, 1906, against an order passed by the learned Tahsildar, Yeola, dated 31 July, 2019, allowing the suit filed by respondent nos.1 to 10. The petitioners' revision has been dismissed by the impugned order.

3. Mr. Agrawal has two contentions in assailing the findings of both the authorities. His first contention is that the suit under Section 5 of the Mamlatdars' Courts Act filed by respondent nos.1 to 10 against the petitioners, was barred by limitation, in as much as in paragraph 14 of the plaint, cause of action has been stated to have been accrued to respondent

nos.1 to 10/plaintiffs on 16 October, 2015 when it was alleged that the petitioners had destroyed the road/ path and obstructed respondent nos. 1 to 10 to use the said road to access their lands. The second contention as urged by Mr. Agrawal is that the proceeding under Section 5 of the Mamlatdars' Courts Act was not maintainable in view of a suit being Suit No.63 of 2016 instituted by respondent nos.1 to 9 before the Court of Civil Judge at Yeola, Nasik by respondent nos.1 to 10 espousing the very same cause of action against the petitioners. It is only on these two grounds the proceedings as filed by respondent nos.1 to 10 under Section 5 of the Mamlatdar Court's Act ought not to have been entertained by the learned Tahsildar. Such findings of the learned Tahsildar are erroneously confirmed by the appellate authority, is what is urged by Mr.Agarwal.

4. On hearing Mr. Agrawal and on a perusal of the record and the impugned orders, in my opinion, none of the contentions as urged by Mr. Agrawal deserve acceptance. Firstly, in regard to the issue of limitation, it clearly appears from the record that although a cause of action had arisen to respondent nos.1 to 10 on 16 October, 2015, however, within a period of two months i.e. on 18 December, 2015 respondent nos.1 to 10/ plaintiffs had approached the learned Tahsildar under Section 5 of the Mamlatdars' Courts Act, for removal of the encroachment and praying for a relief for opening of the road in question as obstructed by the petitioners. There is

clear mention in this regard in the impugned order passed by the appellate authority. There is no material to displace such finding as recorded by the appellate authority to hold that the said finding is perverse and/or such an application was not made by respondent nos. 1 to 10 on 18 December, 2015. Sub-section (3) of Section 5 of the Mamlatdars' Courts Act clearly provides for a limitation of 6 months to institute a suit under Section 5 of the Mamlatdars' Courts Act from the date on which the cause of action arose. Both the authorities below have rightly observed that the suit filed by respondent nos. 1 to 10/plaintiffs was within the prescribed limitation as prescribed under Sub-section (3) of Section 5 of the Mamlatdars' Courts Act.

5. Mr. Agarwal's second contention is to the effect that, as a civil suit was instituted by Respondents Nos.1 to 9 before the Civil Court at Yeola, District Nashik, the proceedings/ suit under the Mamlatdar's Court Act would be barred. In supporting this contention, Mr. Agarwal has placed reliance on the provisions of Section 26 of the Mamlatdar's Court Act to contend that said provisions in the present facts barred a suit instituted by respondents nos. 1 to 10 under Section 5 of the Mamlatdar's Court Act. To examine this contention, it would be appropriate to note the said provision, which reads thus:-

“26. Bar of certain suits. - No suit shall lie under this Act-
 (a) [against Government or against any Government officer] in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guardian duly

constituted under any law for the time being in force; or
 (b) in respect of [any removal of any impediment or of] any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, 1898.”

6. On a plain reading of the above provision, it is clear that clause (a) of Section 26 is certainly not applicable. Clause (b) of Section 26 provides that no suit under the Act would be maintainable in respect of removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been the subject of “previous proceedings”, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, 1898 (although it would be now the Criminal Procedure Code, 1973). In the present case, the suit in question was instituted by respondent nos.1 to 9 on 26 April, 2016 which is much after respondent nos.1 to 10 filed proceedings under Section 5 of the Mamlatdars' Courts Act, (Vahivat Case No. 38 of 2015) which were filed on 18 December, 2015. Thus there is no question of application of the bar as created by sub-clause (b) of Section 26. The civil suit filed by respondent nos.1 to 10 cannot be regarded as any proceeding which was “previously instituted”, before respondent nos.1 to 10 instituted proceeding under Section 5 of the Mamlatdars' Courts Act. Hence, for the reason that the civil suit being a subsequent suit, clause (b) of Section 26 of the Mamlatdars' Courts Act can have no application.

7. Despite the above clear position, the law would bring about, Mr. Agrawal in supporting the second contention has placed reliance on the decision of the Division Bench of this Court in **Moti Jagta versus Indural Bhaurai Desai and others** reported in **1927 SCC OnLine Bom 52**. A perusal of this decision would show that the question which fell for consideration of the Court, was whether the jurisdiction of Mamlatdar was barred when there was a “civil suit pending”, between the parties in respect of removal of any impediment or of any dispossession, recovery of possession or disturbance of possession. The Court, considering the plain language of clause (b) of Section 26 of the Mamlatdars' Courts Act, held that on the date on which the proceedings under Section 5 of the Mamlatdars' Courts Act in that case were instituted, a “civil suit was pending”, between the parties, it was hence held that bar under clause (b) of Section 26 of the Mamlatdars' Courts Act would become applicable. In fact, the said decision militates against the petitioner, rather than to support the petitioner’s case. Resultantly, the second contention of Mr. Agarwal needs to be rejected.

8. As a result of the above discussion, there is no merit in the writ petition. It is accordingly rejected. No costs.

(G. S. KULKARNI, J.)