

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 73 OF 2021

**SUJATA DHANRAJ WALUNJKAR AND ANOTHER
VERSUS
SANGITA DILIP BHANDARI AND OTHERS**

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Advocate for Petitioners : Mr. Jiwan J. Patil h/f. Mr. Rajendra Sudam Kasar
Advocate for Respondent Nos. 1 and 2 : Mr. Yuvraj V. Kakade
AGP for Respondent Nos. 3 to 5 : Mr. S. W. Munde

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CORAM : MANGESH S. PATIL, J.

DATED : 28 MARCH, 2022.

ORAL ORDER :

1. The original defendants are invoking the powers of this Court under section 115 of the Code of Civil Procedure (for short, “CPC”) to put up a challenge to the order passed by the trial court rejecting their application filed under Order 7 Rule 11 of CPC, seeking rejection of the plaint.

2. Learned Advocate for the Revision petitioners submits that a decision rendered by the Tahasildar under section 143 sub-section 1 of the Maharashtra Land Revenue Code, 1856 (for short, “Code”) was challenged by the respondent-plaintiff by preferring an appeal as is permissible under sub-section 3 of that provision. It was dismissed by the learned Sub Divisional

Officer. He challenged that decision by preferring a revision before the Additional Collector in view of section 257 of the Code. It was specifically averred in the plaint that while that revision was pending before the Additional Collector the respondent has chosen the remedy of filing a suit under sub-section 4 of section 143 of the Code. By referring to the decision in the case **State of Rajasthan Vs. Union of India and Ors.; (2018) 12 SCC 83**, the learned Advocate would submit that when the statute has provided two remedies, one under sub-section 3 of preferring an appeal and revision before the Revenue Authorities under the Code and a remedy of filing a suit in the Civil Court under sub-section 4 of section 143 of the Code to challenge the order of Tahasildar and once the respondent had exhausted the first remedy, he was not entitled to resort to the alternate remedy which, going by the wording, is nothing but an alternate remedy and not an additional one.

3. Learned Advocate would further submit that even the suit was not maintainable on the point of limitation inasmuch as the challenge to the order of Tahasildar by filing a suit under sub-section 4 of section 143 of the Code should have been put within one year from the date of the order. He would submit that going by the averments in the plaint, suit was hopelessly time barred having been filed beyond the period of one year.

4. Learned Advocate would submit that the trial court has not at all considered the objection on merits regarding maintainability of the suit. He

has not undertaken any exercise of exploring as to if in view of the wording of section 143 of the Code and various sub-sections, once having exhausted a remedy of challenging the order by preferring the appeal, the respondent could have invoked the other remedy of filing the suit. Without indulging into any such exercise, the learned Judge has simply recorded a finding that the suit was maintainable without assigning any reason at all.

5. Learned Advocate would further submit that the trial court also kept open the issue of limitation, when it could have been easily decided on the basis of the averments in the plaint without requiring any exercise of recording evidence.

6. Per contra, the learned Advocate Mr. Yuvraj Kakade for the respondent Nos.1 and 2 submits that the respondent was entitled to invoke both the remedies which are not in substitution of each other. Though a revision was pending against the order of Sub Division Officer before the Additional Collector that revision has been withdrawn after the suit was filed. He would submit that the suit was maintainable at least thereafter.

7. Learned Advocate would further submit that though a period of one year is provided for challenging the order of Tahasildar by filing a suit under sub-section 4 of section 143 of the Code, it does not take into consideration the date of knowledge of the order. The respondent has

specifically explained in the plaint as to how and when he got the knowledge and from the date of knowledge coupled with the order passed by the Supreme Court extending the period of limitation in Suo Motu Writ Petition (C) No.3 of 2020 from time to time, the suit was within limitation.

8. I have carefully perused the order passed by the learned Judge. Though his attention was drawn to the various sub-sections of section 143, the learned Judge does not seem to have taken pains to decipher the difference in the two remedies available to a party to challenge the order of Tahasildar, one under sub-section 3 and the other sub-section 4. Without even undertaking such an exercise, he proceeded to record a finding that the suit was maintainable, when, as is submitted by the learned advocates of both the sides, the learned Judge ought to have recorded an objective finding based on his interpretation of the provisions. *Ex facie* he has refused to exercise the jurisdiction of deciding the issue that was vested in him.

9. Same is the case with the issue regarding the suit being time barred. Simply by observing that the question of limitation is a mixed question of fact and law, he has refused to reply it by keeping it open to be decided at the time of deciding the suit. Though it is trite that in a given case, when the question of limitation is a mixed question of fact and law it would not be appropriate to decide it at a preliminary stage. However, if the appellants on the basis of the averments in the plaint itself were seeking to

point out as to how the suit was barred by limitation, without indulging in and allowing the parties to lead any evidence, the trial court could have decided this issue as well. It is, therefore, quite clear that it has erred in refusing to exercise the jurisdiction that was vesting in him.

10. The revision is partly allowed. The impugned order is quashed and set aside. The matter is remitted back to the trial court for decision afresh on the applications (Exhs. 28 and 33) after extending opportunity of being heard to both the sides and uninfluenced by the observations made hereinabove, touching the merits of the case. It is made clear that, it shall decide the application on the basis of the material that is already on the record and the parties shall not be entitled to produce anything more at this juncture. The decision shall be taken as early as possible.

(MANGESH S. PATIL, J.)