

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

WRIT PETITION NO. 686 OF 2020

1. Shri Pandhari Panjabrao
Khandarkar, aged about : 60 yrs,
Occp : Agriculture
2. Smt. Shalini wd/o Haridas
Khandarkar, Aged about : 50 Yrs,
Occp : Household
3. Shri Akshay Haridas Khandarkar,
Aged about 29 Yrs, Occup :
Agriculture
4. Ku. Ankita Haridas Khandarkar,
Aged about : 23 Yrs., Occp :
Household
5. Ku. Vaishnavi Haridas Khandarkar,
Aged about : 21 Yrs., Occp :
Household

All R/o Varha Tah. Morshi, Distt.
Amravati.

.... **PETITIONER**

// VERSUS //

1. Smt. Shalini wd/o Anandrao
Shahane, Aged about : 60 Years,
occp : Household, R/o : Varha, Tah.
Morshi, Distt. Amravati.
2. Sau. Pranita Devidasrao Ghatole,
Aged about : 38 years, Occp :
Household R/o Nandgaon, Tah.
Warud, Distt. Amravati.
3. Shri Praful Anandrao Shahane, Aged
about : 35 Yrs, Occp : Agriculture,

R/o Varha, Tah. Morshi, Distt.
Amravati.

4. Shri Sachin Anandrao Shanahe,
Aged about 33 Yrs, Occup : Service,
R/o Kinwat, Tah. Kinwat, Distt.
Nanded.
5. The Sub Divisional Officer, Morshi,
Distt. Amravati.
6. The Mamlatdar-Cum-Naib Tahsildar,
Morshi, Distt. Amravati.

.... **RESPONDENTS**

Shri D.B. Walthare, Advocate for the petitioners.

Shri D.P. Dapurkar, Advocate for the respondent no. 3.

Assistant Government Pleader for respondent nos. 5 and 6.

CORAM : ROHIT B. DEO, J.

DATED : 28.02.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioners are the defendants in the proceedings initiated by the plaintiffs who are the legal heirs of deceased Anandrao Shahane, under Section 5 of the Mamlatdar's Court Act, 1906 ('the Act').

3. The learned Mamlatdar vide order dated 30.07.2018 was pleased to injunct the defendants from obstructing the plaintiffs from approaching field Survey 28/5A by the approach road on the western boundary of the suit field. This finding is confirmed by the Revisional Court, which dismissed the revision preferred by the defendants, under Section 23

of the Act.

4. The substratum of the plaint is that the plaintiffs are entitled to approach their agricultural field Survey 28/5A by the Varha to Sinora Pandhan Road and via the South-North road on the Western boundary of the agricultural field owned by the defendant. The plaintiffs alleged that the road is being used since more than 60 years and it was in May, 2015, that the defendants obstructed the plaintiffs from using the said road.

5. The defendants filed written statement denying the claim on merits and additionally submitted that the plaint is not in proper format and the provision of law is not disclosed.

6. The plaintiffs have adduced the evidence and so have the defendants in rebuttal. The spot was inspected by the learned Mamlatdar, personally. On the basis of appreciation of material on the record, the claim of the plaintiffs was accepted and an injunction issued.

7. The Revisional Court agreed with the findings recorded by the learned Mamlatdar.

8. Twin submissions are canvassed by the learned Counsel for the defendants Mr. Walthare.

9. The first submission is that the plaint was not in proper format. I have noticed from the amended plaint that the same substantially complies

with the provisions of the act and is also supported by an affidavit. The submission is therefore, rejected.

10. The other submission is that the suit is time barred since the institution is after six months of the accrual of cause of action. I note from the record that such an assertion was not made at all in the Mamlatdar's Court. Issue of limitation is not always a pure question of law. In this view of the matter, the decision in ***Vishnu Sukhdev Ghanvat and ors Vs. Collector, Ahmednagar and ors. 2017(1) Mh.L.J. 811*** is of no assistance to the defendants. *Au contraire*, the issue is more often than not a mixed issue of fact and law. In the present case, the ground of limitation is raised by Mr. Walthare on the premise that Mr. Anandrao Shahane had instituted similar application earlier, and the plaintiffs are the legal heirs of deceased Anandrao Shahane and have admitted that such an application was instituted. The application to which Mr. Walthare has invited my attention is undated. Moreover, it is not clear from the said application whether there is commonality between the cause of action, which deceased Mr. Anandrao Shahane had in mind and the cause of action in the plaint instituted by the plaintiffs. I say so since the single paragraph document to which Mr. Walthare has invited my attention, does not give any indication of what exactly was the cause of action and to which law, if at all deceased Anandrao Shahane intended to refer.

11. I am therefore not inclined to give much credence to the

submission which is predicated on limitation.

12. Both the Courts have concurrently recorded a finding of fact and in writ jurisdiction, I would be loath to interfere. No perversity either substantive or procedural is brought to my notice. No miscarriage of justice as such is demonstrated.

13. I see no reason to interfere in writ jurisdiction. The petition is dismissed.

(ROHIT B. DEO, J.)

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