

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CIVIL REVISION APPLICATION NO. 59 OF 2019

Deorao s/o Purnaji Wankhade Vs. Sau. Saroj w/o Ramkrishna Gawande and anr.

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

Court's or Judge's Orders.

Mr. P.S. Gawai, Advocate for applicant.

Mr. Dhiraj Ailani, Advocate h/f Mr. U.J. Deshpande,
Advocate for non-applicant No.1.

CORAM : MANISH PITALE J.

DATE : 05.07.2022.

By this application, the applicant i.e. defendant No.1 has challenged order dated 23.04.2019 passed by the Court of 6th Joint Civil Judge Junior Division, Akola, whereby an application filed under Order 7 Rule 11 of the Civil Procedure Code for rejection of plaint has been rejected.

2. The respondent No.1 filed a suit for permanent and mandatory injunction by making allegations against the applicant and respondent No.2, for removal of obstruction made in the cart-way of respondent No.1 to approach her field.

3. The learned counsel for the applicant relied upon paragraph 5 of the plaint as the cause of

action pleaded in the plaint, to contend that the cause of action according to the respondent No.1 arose on 03.06.2012 itself and that therefore, the suit being filed in September 2016 was clearly barred by limitation.

4. It was also contended that in the plaint itself reference was made to proceeding initiated by the respondent No.1 before the Mamlatdar Court which demonstrated that the plaint deserved to be rejected as being barred by limitation, on the basis of bare perusal of the contents of the plaint. Submissions were also made as regards Section 22 of the Mamlatdar's Court Act, 1906, as to what could be continuing cause of action.

5. The learned counsel appearing for the contesting respondent No.1 opposed the contentions raised on behalf of the applicant. It was submitted that continuing cause of action was clarified by the Hon'ble Supreme Court in a number of judgments. In the present case, it could not be said that the suit filed in September 2016 was barred by limitation.

6. This Court has perused the impugned order. It is observed therein that a perusal of the plaint would show that the respondent No.1 was suffering due to the obstruction made by the

petitioner in the cart-way to her field and hence, continuing cause of action was there and that therefore, the suit could not be said to be barred by limitation.

7. This Court is of the opinion that a perusal of the plaint does not give an impression that the suit can be said to be barred by limitation. The proceedings initiated by the respondent No.1 before the Mamlatdar were delayed and in such circumstances, the respondent No.1 was constrained to file the suit against the applicant and other defendants.

8. Section 22 of the aforesaid Act, makes it clear that any proceedings undertaken and order passed by the Mamlatdar would be subject to civil suit that may be filed before the Civil Court. This is significant because if the contention raised on behalf of the applicant is to be accepted, it may have the effect of rendering suits by aggrieved persons being thrown out as barred by limitation, only because they approached the Mamlatdar under the provisions of the said Act.

9. Insofar as the question as to whether the present case would be barred by limitation or whether there was continuing cause of action, it

would be appropriate for the Court below, to frame an issue of limitation, as it being a mixed question of fact and law and the said issue can be decided along with other issues after giving opportunity to the parties.

10. The Court below has been cautious to observe that the suit cannot be said to be barred by limitation only by looking at the averments made in the plaint. It would have been appropriate for the Court below to have further clarified that the issue of limitation was being kept open to be decided during the trial.

11. Hence, the application is dismissed with the clarification that the issue of limitation, being a mixed question of law and fact in the present case, can be framed during the course of trial and decided, in accordance with law.

JUDGE