

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.744 OF 2022
WITH
CIVIL APPLICATION NO. 15462 OF 2022
IN
SECOND APPEAL NO. 744 OF 2022

Group Gram Panchayat, Mahukheda

... Appellant

Versus

Dhanraj Prabhu Pawar (Patil)
and others.

... Respondents

...
Mr.A.M. Salok - Advocate for appellant.
Mr.M.M. Bhokarikar - Advocate for respondents

...
CORAM : GAURI GODSE, J.
DATE : 17th February, 2023

PER COURT :

1. This second appeal is preferred by the defendant for challenging the concurrent decree of declaration that appellant has no right over the suit Well, as well as injunction restraining the appellant from causing obstruction to the possession of the respondents ("plaintiffs") over the suit Well.
2. Regular Civil Suit No. 4 of 2010 was filed by the respondents for declaration of ownership over the suit Well situated on the southern side of Gat No.1/1 as well as injunction restraining the appellant from causing obstruction to the possession of the

respondents over the suit well. Appellant had appeared in the suit, however, failed to file written statement, hence by order dated 6th February, 2012 the suit was directed to be proceeded without written statement of the appellant. By judgment and decree dated 11th October, 2014, learned Civil Judge, Junior Division, Jamner decreed the suit.

3. Being aggrieved by the judgment and decree of the Trial Court, the appellant preferred Regular Civil Appeal No.39 of 2016. By judgment and decree dated 18th July, 2022, learned Adhoc District Judge-1, Jalgaon dismissed the appeal and the decree of the Trial Court was confirmed. Hence the present Second Appeal.
4. Learned counsel for the appellant submitted that the appellant/defendant is a Gram Panchayat represented through the Gram Sevak, hence there was a bar of jurisdiction to the Court of Civil Judge, Junior Division. In support of his submission, he relied upon section 32 of the Maharashtra Civil Courts Act and submitted that a suit that was filed against a Government servant is required to be filed only before the Court of Civil Judge, Senior Division. He also relied upon section 184 of the Maharashtra Village Panchayats Act 1958 ("Village

Panchayat Act”) and submitted that every member of the Gram Panchayat is deemed to be a public servant and hence the suit was required to be filed before the Court of Civil Judge, Senior Division. Since, the suit was filed before the Court of Civil Judge, Junior Division, the Court had no jurisdiction to entertain the suit.

5. Learned Advocate further submitted that under section 59 of the Village Panchayat Act, the claim that was made by the respondents was maintainable before the Collector and he had powers to make formal inquiry and pass the order deciding the claim. He, therefore, submitted that in view of the said section 59, there was bar for deciding the suit as claimed by the respondents before the Civil Court. In support of this submission, learned advocate for the appellant relied upon the decision of this Court in the case of *Shivajirao Eknathrao Kovale and others Vs. Syed Mehmood Syed Nizamoddin and others*¹. Learned advocate submitted that this Court in the decision of *Shivajirao Kovale* has held that when there is a remedy available under the statute with respect to the claim in a suit, the jurisdiction of the Civil Court is held to be impliedly barred. He further relied upon the said judgment to contend that

¹ 2007(5) All MR 132

though the bar of jurisdiction was not raised before the Trial Court or First Appellate Court, the same being a question of law can be raised in the present Second Appeal.

6. Learned advocate also submitted that the suit was bad for non-joinder of State Government as party defendant. He submitted that since the claim was against the Government with respect to the Government property, State Government was necessary party and that both the Courts failed to appreciate the said fact and failed to frame necessary issue with respect to non-joinder of necessary party.
7. Learned counsel also submitted that in the first appeal, there was specific ground raised with respect to the suit being barred for want of notice under section 180 of the Village Panchayat Act. He therefore, submitted that the suit was also required to be dismissed for want of notice under section 180 of the Village Panchayat Act. Learned advocate, thus, submitted that, all these questions of law arise in the second appeal and hence, the second appeal needs to be admitted for decision of these substantial questions of law.
8. Learned advocate for the respondents submitted that the appellant appeared in the suit, however, never filed any written

statement. He further submitted that since there was no written statement filed by the appellant contenting that the suit property belongs to the State Government and/or Gram Panchayat, there was no question of State Government being joined as a party. With respect to the objection raised on the ground of notice under section 180 of Maharashtra Village Panchayat Act, learned counsel submitted that the First Appellate Court has specifically framed the issue with respect to suit being bad for want of notice under section 180 of Maharashtra Village Panchayat Act and has held that the Trial Court waived the service of notice under section 180 of the Village Panchayat Act. The said order was never challenged by the appellant. With respect to the suit being barred for want of jurisdiction in view of section 32 of the Maharashtra Civil Courts Act is concerned, learned counsel submitted that the suit was not filed against any public servant and suit was filed against Gram Panchayat, hence it was very well maintainable before the Civil Judge, Junior Division. Hence, there was no merit in the said submission on behalf of the appellant. With respect to the submissions on the point of section 59 of the Village Panchayat Act, the learned advocate for the respondents submitted that though the said

section provided for inquiry to be made by the Collector, there was no bar for filing the Civil Suit, filed by the respondents. He further submitted that the appellant neither filed any written statement disputing the claim of the respondents nor raised any specific plea with respect to any right of appellant. He therefore, submits that no question of law is involved in the Second Appeal and Second Appeal be dismissed.

9. I have considered the submissions made on behalf of both the parties. The suit filed by the respondents is specifically on the basis of ownership rights over the suit Well and documentary evidence is produced on record in support of the same. Respondents have also examined witnesses in support of the documents. Learned Trial Judge after examining all the documents and oral evidence has recorded a finding that there was no dispute with respect to the ownership of the respondents over the suit Well. The suit thus was filed only against Gram Panchayat and it was not filed against any public servant. Hence, there is no question of bar under section 32 of the Maharashtra Civil Courts Act.
10. The submissions of the learned counsel for the appellant with respect to the definition of public servant under section 184 of

the Village Panchayat Act is concerned, the same will not be applicable in the present case as the suit is specifically filed against the Gram Panchayat and no member or officer and servant of the Panchayat is independently made party to the suit. Even otherwise, the definition as prescribed under section 184 of the Village Panchayat Act is concerned, the same is with respect to the deemed meaning of the word public servant within the meaning of section 21 of the Indian Penal Code. Hence, there is no merit in the submission made on behalf of the appellant that the Court of Civil Judge, Junior Division had no jurisdiction in view of the section 32 of the Maharashtra Civil Courts Act.

11. The learned Advocate for the respondents is right in submitting that there is no specific bar under the Village Panchayat Act for the purpose of filing the suit against the Gram Panchayat in a Civil Court and that, section 59 of the Village Panchayat Act cannot be interpreted to mean that the Civil Suit is barred in view of section 59. Though, the bar of jurisdiction has to be considered as a substantial question of law, it is not demonstrated as to how in the facts of present case, the jurisdiction of Civil Court is expressly or impliedly barred under

any of the provisions of the Village Panchayat Act. Hence, the decision of this Court in the case of *Shivajirao Kovale* relied upon by the learned Advocate for the appellant is of no assistance to the appellant. The submission made by the learned Advocate for the appellant that the suit was barred for want of notice under section 180 of the Village Panchayat Act, also has no merit, as the Trial Court had waived service of notice under section 180.

12. There is no merit in the argument made by the learned counsel for the appellant that since the suit property was an ownership property of the Gram Panchayat, it was property of the State Government, and therefore, the State Government was necessary party. Appellant has never filed any written statement claiming ownership over the suit Well. The record shows that there was no cross-examination on behalf of the appellant and no such question with respect to the challenge to the ownership of the suit Well was put forth to the witnesses of the plaintiffs for controverting the ownership rights of the respondents. Hence, the submission made with respect to the non-joinder of necessary parties cannot be taken as a question of law in the Second Appeal.

13. The reasons given by both the Courts with respect to the ownership of the respondents over the suit Well as well as the obstruction made by the appellant to the possession of the respondents over the suit Well is recorded in favour of the respondents by appreciating the documents as well as the oral evidence. There is no illegality or perversity in the reasons recorded in the impugned judgments. Thus, I do not find that there is any merit in the submissions made on behalf of the appellant. No substantial question of law arises in the second appeal. Hence the second appeal is dismissed.
14. In view of dismissal of the Second Appeal, pending civil application stands dismissed.
15. At this stage, learned counsel for the appellant requests that interim protection that was granted in the matter in favour of the appellant be extended for four weeks from today. Learned counsel for the respondents oppose the said request on the ground that both the Courts have recorded findings in favour of the respondents, hence there will be serious prejudice to the rights of the respondents if the order of stay is extended. Considering the nature of the decree and facts of the case, interim protection already granted, by order passed on 18th

November, 2022 to continue for a period of six weeks from today.

[GAURI GODSE, J.]