



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.198 OF 2023**

1. Rajendra s/o Chintaman Bhalerao,
Age-51 Yrs., Occu.-Service,
R/o-Flat No.1201 Mah. LIG Building,
No.8, Dhanshri Society, Sct.-37
Taloja, Dist.-Raigad.
 2. Smt. Jayashri w/o Narayan Sapkale,
Age- 60 Yrs., Occu.-Household,
R/o- Bhaskar Nagar, Bhadgaon Road,
Pachora, Dist.-Jalgaon.
 3. Ranjana s/o Shivram Sapkale,
Age-58 Yrs., Occu.-Household,
R/o-Gendalal Mill, Jalgaon,
Tq. & Dist.-Jalgaon.
 4. Chandrabhagabai w/o Bhagwat Bhalearao,
Age- 70 Yrs., Occu.-Household,
R/o- Rahul Nagar, Bhusawal,
Tq.-Bhusawal, Dist.-Dist.-Jalgaon.
- ..Applicants
(Orig./Deft. No.1, 3 to 5)

Versus

1. Dinkar s/o Mulchand Bhalerao,
Age-67 yrs., Occu.-Retd.,
..Respondents
(Res. No.1 Orig. Plaintiff)
2. Devanand s/o Mulchand Bhalerao,
Age-55 yrs., Occu.-Service,
(Res.No.2 Orig.
Deft.No.6 Co. Deft.)
Res.No.1 & 2 Above
R/o-Block No.12, Plot No.44
Parakh Nagar, Near Telephone Nagar,
Jalgaon, Tq. & Dist.-Jalgaon.
3. Chandrakant Chintaman Bhalerao
(died on 01.05.21)
(Res.No.2 Orig.
Deft. No.02.)

...

Mr. Ajit M. Gholap, Advocate for the Applicants.

Mr. A. P. Yenegure, Advocate for Respondent Nos.1 and 2.

...

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 25th NOVEMBER, 2024.

ORDER:-

1. The applicants takes exception to order dated 06.09.2023, passed by the Civil Judge Junior Division, Yawal, below Exhibit-21 in Regular Civil Suit No.01/2018 thereby rejecting application under Order VII Rule 11 of the Code of Civil Procedure.
2. The applicants are original defendants in Regular Civil Suit No.01/2018 pending before Civil Judge Junior Division, Yawal. The respondent no.1 is original plaintiff. (Hereinafter, parties are referred as per their original status in the suit for the purpose of convenience and brevity).
3. Plaintiffs case is that he is owner of land Gut No.276. The defendants are attempting to create new access road from Northern side passing from bandh of Gut No.276 to approach Gut No.277. Previously, father of defendant nos.1 and 2 namely Chintaman Eko Bhalerao had applied for grant of way under Section 5 of the Mamlatdar's Courts Act vide Wahivat Case No.12/2001, which was rejected on 18.04.2002. Thereafter, father of defendant nos.1 and 2 filed another proceeding vide Wahivat Case No.12/2003, which has been rejected on 03.03.2006. Thereafter, defendants themselves filed similar application under Section 5 of the Mamlatdar's Courts Act vide Wahivat Case

No.01/2010, which has been rejected by Tahsildar on 26.07.2010. Thereafter, defendant no.1 and others filed Regular Civil Suit No.53/2010 and they claimed road from Northern side of Gut No.276 passing from bandh of land Gut No.276 owned by plaintiff. An application below Exhibit-6 was filed in that Suit for grant of temporary injunction, which was rejected on 27.08.2010. Even, Miscellaneous Civil Appeal No.179/2010 filed against said order has been rejected by District Court. The Regular Civil Suit No.53/2012 was thereafter dismissed in default. Even, application for restoration of suit suffered dismissal for want of prosecution.

4. It is a case of plaintiff that unsuccessful defendants then raised false plea that their land has been locked and filed fresh Wahivat Case No.03/2013 under Section 5 of the Mamlatdar's Courts Act. They alleged obstruction to existing way at the hands of plaintiff. The learned Tahsildar erroneously allowed said application vide order dated 30.08.2014. The plaintiff filed Revision Application No.13/2014 before Sub Divisional Officer assailing order of Mamlatdar. However, said Revision Application was rejected. Thereafter, as advised, plaintiff unsuccessfully availed ready of RTS Revision No.244/2017 before the Additional District Collector, Jalgaon which came to be rejected as not maintainable.

5. The plaintiff contends that Tahsildar cannot repeatedly exercise jurisdiction under Section 5 of the Mamlatdar's Courts Act in consecutive proceedings. However, learned Tahsildar conclusively passed order in favour of defendants and now attempting to create new road. Till this date, order has not been implemented. However, plaintiff was served with notice dated 19.12.2017 for execution of order Tahasildar's order dated 30.08.2014. The plaintiff apprehends that defendants would create new way (wahivat). Hence, he filed suit with prayer that defendants themselves or through any other shall not create new road (wahivat) illegally on the basis of order of Tahsildar in Wahivat Case No.03/2013 and seeks decree of perpetual injunction against defendants restraining them from creating new Road from plaintiff's land i.e. Gut No.276. The plaintiff has further sought declaration that defendants have no right of way from plaintiff's land Gut No.276.

6. The defendants caused appearance in the suit and filed application at Exhibits 21 and 30 invoking Section 9(A), Order VII Rule 11(d) and Section 151 of the Code of Civil Procedure with specific prayer to frame issue as to the jurisdiction and try same as preliminary issue.

7. It is contention of defendants that order passed by the Tahsildar granting way in their favour has attained finality. Since

order has been confirmed upto Divisional Commissioner, in light of provisions of Section 143 of the Maharashtra Land Revenue Code (for short 'MLR Code') after exhausting remedies of revision and appeal under MLR Code, plaintiff cannot turn back and file suit against order of Tahsildar which is passed in Wahivat Case No.03/2013.

8. The Trial Court rejected both applications holding that Section 143 of the MLR Code does not bar suit by law, even if, parties availed remedies under Section 143(3) of the MLR Code. It is further observed that provisions of Section 143(5) of the MLR Code only bars appeal and revision against order passed by Tahsildar, if civil suit is instituted as per Section 143(4) of the MLR Code.

9. Mr. Gholap, learned Advocate appearing for the applicants submits that Civil Court has ample powers to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure, once it is pointed out that suit is barred by any law or plain reading of the plaint sans cause of action. He submitted note of arguments in addition to oral submissions contending that Section 4 of the Maharashtra Revenue Jurisdiction Act, 1876 specifically bars institution of suit to set aside or avoid any order passed by the officer duly authorized in that behalf. He would further submit that once plaintiff has availed remedy of filing Revision under

Section 143 of the MLR Code, the suit instituted against such order would be barred. He would further submit that cause of action in plaint is fictitious. In support of his contentions he relies upon judgment of the Supreme Court of India in case of ***Kum. Geetha D/o Late Krishna & Ors. Vs. Nanjundaswamy & Ors. (Civil Appeal No.7413/2023*** dated ***31.10.2023***) as well as judgment in case of ***Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors. (Civil Appeal No.2717/2023*** dated ***28.04.2023***).

10. Per contra, Mr. Yenegure, learned Advocate appearing for respondent/plaintiff submits that provision of Section 143 of the MLR Code would have no application in the facts of the present case. He would invite attention of this Court to the order dated 30.08.2014 in Wahivat/SR/03/2013 under Section 5 of the Mamlatdar's Courts Act. He would, therefore, urge that very basis of the contention of defendants that suit is barred in view of Section 143 of the MLR Code is incorrect. In alternative, he submits that this Court in case of ***Jarasand Suryabhan Borkar Vs. Bhagwat Suryakant Kale and Ors***¹ held that remedy of filing suit assailing order passed under Section 143 of the MLR Code would not be barred, even after availing remedy of appeal or revision under the Code. He would further submit that substantive suit filed by plaintiff neither raises challenge to the order passed by Tahsildar nor it has been filed to avoid order of Revenue

¹ (2024) 09 BOM CK 0018.

Authorities. The Maharashtra Revenue Jurisdiction Act, 1876 would not be applicable in the facts of the case.

11. Having considered submissions advanced by the learned Advocates appearing for the respective parties and upon perusal of the material tendered into service before this Court, it can be observed that defendants had tendered application with prayer to frame issue as to jurisdiction under Section 9(A) of the Code of Civil Procedure but looking to the title clause of application Trial Court entertained it under Order VII Rule 11 r/w. Section 151 of the Code of Civil Procedure. Careful reading of the application depicts that defendants put up case that in light of scheme under Section 143 of the MLR Code, once order passed by Tahsildar is subjected to revision invoking Sub-clause (3) of Section 143 of the MLR Code, subsequent suit assailing order of Tahsildar would not be maintainable. According to defendants, Tahsildar's order dated 30.08.2014 in Wahivat Case No.03/2013 has been confirmed in Revision by the Sub Divisional Officer and further challenge before the Additional District Collector and Divisional Commissioner has been failed, therefore, plaintiff cannot institute camouflage suit indirectly assailing order of Tahsildar.

12. So as to appreciate aforesaid objections, it is necessary to find out nature of order dated 30.08.2014 passed in Wahivat/SR/03/2013 passed by Tahsildar. Apparently, defendant no.1-Rajendra

Chintaman Bhalerao had instituted proceeding under Section 5 of the Mamlatdar's Courts Act which has been decided vide order dated 30.08.2014, by which right of way has been confirmed in favour of defendant no.1. Tahasildars depicts that he exercised jurisdiction under Section 5 of the Mamlatdar's Courts Act and not under Section 143 of the MLR Code. Therefore, very foundation of defendant's applications Exhibits 21 and 30 that suit is barred in view of Section 143 of the MLR Code appears to be fallacious. Once it is found that proceeding before Tahsildar was under Section 5 of the Mamlatdar's Courts Act, there was no reason to entertain objection as to bar of suit based on provision of Section 143 of the MLR Code.

13. Perusal of pleadings in the suit would show that plaintiff seeks declaration that defendants have no right of way from land Gut No.276 and also seeks perpetual injunction from creating new way under garb of executing order passed in Wahivat Case No.03/2013. Apparently, plaintiff is not challenging the order of Tahsildar, but seeks declaration that such order would not create right of new way from land Gut No.276 in favour of defendants. The decree of perpetual injunction is sought to not to create new way on the basis of order of Tahsildar. Plain reading of contents of plaint and prayers in suit, nowhere suggests that any order passed under Section 143 of MLR Code has been subjected to

challenge in the suit. Therefore, very foundation of defendants contention that suit is barred by law would not be sustainable.

14. It is trite that provision under Order VII Rule 11 can be invoked only on the basis of contents of plaint. Any other contention in defence that requires scrutiny of material or adjudication of issue would not be germane for consideration while dealing with application under Order VII Rule 11 of the Code of Civil Procedure. It is not the contention of defendants that suit has been barred in light of provision under Section 26 of the Mamlatdar's Courts Act. Even otherwise, Section 26 of the Mamlatdar's Courts Act bars to institution of fresh proceeding under same Act, when subject matter is dealt in previous proceeding or the suit. Such is not the case in present matter. Any order passed under Mamlatdar's Courts Act would not override jurisdiction of Civil Court to decide the issue. In fact, order of Mamlatdar is in nature of temporary measure to remove obstruction in the existing way. It can never create new way or grant new right of way in favour of any party. The prayer in the suit appears to be exactly in consonance with the aforesaid legal position.

15. Although Mr. Gholap relies upon Section 4 of the Maharashtra Revenue Jurisdiction Act, 1876 to contend that suits to set aside or avoid any order under the same Act or any other law

relating to the same subject for the time being in force passed by the State Government or any office duly authorized in that behalf is barred, it is difficult to hold that said provision would apply in respect of any order passed under Mamlatdar's Courts Act. Pertinently, Section 5(b) of the said Act makes it clear that suit between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of the revenue survey or settlement or in any village papers shall not be barred under Section 4 of the said Act. Therefore, submissions of Mr. Gholap that Section 4 of the Maharashtra Revenue Jurisdiction Act, 1876 would bar present suit cannot be sustained. Consequently, there is no merit in the Civil Revision Application and hence, the same is dismissed.

(S. G. CHAPALGAONKAR)
JUDGE