



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7732 OF 2015

Shri. Vishwasrao Balkrishna Mohite.

...Petitioner.

Versus

Shri. Vitthal Vishnu Mohite and Others.

...Respondents.

Mr. K. S. Patil for the Petitioner.

Mr. Ratan Adhe i/b P. P. Deokar for the Respondent No. 1 to 19.

Ms. Tanu Bhatia, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : October 4, 2024.

P. C. :

1. At the outset, learned counsel appearing for the Petitioner seeks leave to add State of Maharashtra as party Respondent. Leave granted. Amendment to be carried out forthwith. Ms. Tanu Bhatia, AGP waives notice for the Respondent-State.
2. By this petition, the challenge is to the order dated 24th April 2014 passed by the SDO, Kadegaon, District Sangli in Revision Application No.306 of 2014 and the judgment and order dated 9th December 2013 passed by the Tahsildar in Road Case No. 3 of 2012.
3. Facts of the case are that an application was made by the Respondents under Section 5 of the Mamlatdar's Courts Act, 1906 against the present Petitioner alleging that the Petitioner has

obstructed the road passing through Gat No.866/B, which was in existence. The application alleged that in June 2012, the impediment was caused by the Petitioner. The application under Section 5 of the Mamlatdar's Courts Act, 1906 came to be filed on 24th January 2013. By the order dated 9th December 2013, Tahsildar allowed the said application and directed the impediment to be removed. As against this, revision came to be filed under Section 23 of the Mamlatdar's Courts Act, 1906 before the SDO, which rejected the same.

4. Mr. Patil, learned counsel appearing for the Petitioner would raise solitary submission that application under Section 5 of the Mamlatdar's Courts Act, 1906 is barred by limitation as it is the specific case of Applicant that the impediment has been caused in June 2012. He points out to the pleading in the application and the date of application. He would further point out to the provisions of Section 5 of the Mamlatdar's Courts Act, 1906 and in particular Sub-Section (4) thereof dealing with the commencement of cause of action. He submits that neither authorities have considered the said issue and erroneously have allowed the application.

5. *Per contra* learned counsel appearing for the Respondents would submit that the issue of limitation was not raised by the Petitioner before any of the authorities and cannot be raised before this Court for the first time.

6. As far as the pleadings in the application is concerned, it is not disputed that the application pleads that in June 2012, the Petitioner had obstructed the right of way. The application which is on record shows the date of filing of application as 24th January 2013. Sub-Section (4) of Section 5 of the Mamlatdar's Court Act, 1906 provides that cause of action shall be deemed to have been arisen on the date on which the impediment first caused. It is clear from the provisions of Sub-Section (4) of Section 5 of the Mamlatdar's Courts Act, 1906 that the commencement of cause of action is the date on which impediment has been first caused which has to be taken into consideration while computing the period of six months, which is in the present case in June, 2012. Sub Section (3) of Section 5 of the Mamlatdar's Courts Act, 1906 provides that no suit shall be entertained unless it is brought within six months from the date on which the cause of action arose. It is therefore clear that the Mamlatdar's Courts Act, 1906 prescribes specific period of limitation and also defines the starting point of limitation. In the light of this statutory provision, the application in the present case is clearly barred by limitation, it being filed beyond the period of 6 months from the date of cause of action.

7. As far as the submission of learned counsel appearing for the Respondents that issue of limitation was neither pleaded nor raised, Section 3 of the Limitation Act, 1963 is an answer to the same which

provides that every suit instituted or application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

8. In the light of above, as the application under Section 5 of the the Mamlatdar's Courts Act, 1906 is clearly beyond the prescribed period of limitation, impugned orders dated 9th December 2013 passed by the Tahsildar in Road Case No. 3 of 2012 as well as the order dated 24th April 2014 passed by the SDO in Revision Application No. 306 of 2014 stand quashed and set aside. It is open for the Respondents to adopt appropriate civil remedies, if so advised, seeking right of way.

9. Petition succeeds.

[Sharmila U. Deshmukh, J.]