



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

SECOND APPEAL NO. 81 OF 2018

- 1) Dr. Rajashree W/o. Bipin Shende,
aged about 48 years, Occu. : Service,
 - 2) Dr. Bipin Arunrao Shende,
Aged about 49 years,
Occu. : Medical Practitioner,

Both R/o. Shende Hospital,
Sane Nagar, Buldhana,
District Buldhana.
- APPELLANTS**

// VERSUS //

- 1) Dr. Suresh S/o. Mishrilal Chhajed,
Aged about 66 years, Occu. : Medical Practitioner,
- 2) Dr. Prakash S/o. Mathuradas Gupta,
Aged about 56 years, Occu. : Medical Practitioner,

Respondent Nos.1 and 2 R/o. Ashirwad Hospital,
Buldhana, Tq. and Dist. Buldhana.
- 3) Dr. Yashwant S/o Tukaram Chaware,
Aged about 56 years, Occu. : Medical Practitioner,
- 4) Amol S/o. Namdevrao Hirole,
Aged about 59 years, Occu. : Business,

Respondent Nos.3 and 4 R/o. Sane Nagar,
Buldhana, Tq. and Dist. Buldhana.
- 5) The Managing Director,
Buldhana District Central Co-operative
Bank Ltd., Buldhana, Main Branch,
Buldhana, District : Buldhana.
- 6) Chief Officer,
Municipal Council, Buldhana,
District : Buldhana.

- 7) Town Planning Officer,
Administrative Building, Opp. Bus-stand,
Buldhana, District : Buldhana.
- 8) Sub-Superintendent,
Land Records, Buldhana,
District : Buldhana.
- 9) State of Maharashtra,
through Collector, Buldhana,
District : Buldhana.

.... **RESPONDENTS**

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Tq. and Dist. : Buldhana.
- 9) State of Maharashtra,
through Collector, Buldhana,
District : Buldhana.

.... **RESPONDENTS**

(In all Appeals)

Mr. A.R. Deshpande, Advocate for Appellants.

Mr. R.M. Bhangde, Advocate for Respondent No.4.

Mr. A.P. Wachasunder, Advocate for Respondent No.5.

Mr. Abhay Sambre, Advocate for Respondent No.6.

Mr. M.A. Kadu, Assistant Government Pleader for Respondent
Nos. 8 and 9.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 04.07.2024.

DATE OF PRONOUNCING THE JUDGMENT : 04.10.2024.

JUDGMENT.

1. **Admit.** Heard finally with consent of the learned Advocates for the parties.

2. These appeals are preferred against the Judgments and decrees dated 29.09.2017 passed by the learned District Judge-1, Buldhana in Regular Civil Appeal Nos.87/2015, 68/2014 and 88/2015, which were preferred against the Judgment and decree passed by learned Joint Civil Judge, Senior Division, Buldhana in Special Civil Suit No.98/2011 dated 25.03.2014.

3. The plaintiffs filed suit for declaration, perpetual and mandatory injunction with following prayers :

(I) *to pass a decree of declaration, declaring that, the property described in Para No.1 (A) and (B) as a public road.*

(II)

- (III) *to pass a decree for mandatory injunction, directing the defendant Nos.6 to 9 to delete the entry of western side 30 Ft. area, which is wrongly shown as a space for tree plantation in their record with a further direction to correct as “open space left for road for the use of the public at large”.*
- (IV) *to pass a decree of mandatory injunction, directing the defendant Nos.6 to 9 to develop the western side 30 Ft. as a road by giving all the amenities within a stipulated period.*
- (V) *to pass a decree of perpetual injunction, restraining the defendant Nos.1 to 4 or any person claiming through them, from obstructing the plaintiffs, their visitors, patients from approaching to their hospital and residence through the site of 30 Ft. width from the North-South in front of the bungalow of the plaintiffs, which is a public road.”*

4. The suit was strongly objected by respondents on the ground of maintainability as per Section 158 of the Maharashtra Land Revenue Code, 1966 (for short the, “MLR Code”). The learned First Appellate Court held that the suit is barred as per Section 158 of the MLR Code.

5. The substantial questions of law formed are as follows :

- (i) *In the absence of any defence being raised in the written statement that the suit as filed was barred in view of provisions of Section 158 of the Maharashtra Land Revenue Code, 1966 and in absence of any such issue being framed by the trial Court, whether the first appellate Court could have entertained that question without adequate notice to the plaintiff?*
- (ii) *Whether the cognizance of the civil suit is barred under Section 158 of the Maharashtra Land Revenue Code, 1966?*

6. The learned Advocate Mr. A. R. Deshpande for the appellants submitted that the suit was not filed for the directions to the State Government, but it is filed for the perpetual injunction to not to cause the obstruction to the adjacent right of way of the plaintiffs. He, therefore, submitted that suit is maintainable. He is relying upon following authorities :

- (i) ***Vidhyadhar Vs. Manikrao & Anr.***, reported in ***AIR 1999 SC 1441***, in which it is held that, a person in his capacity as a defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff.

(ii) ***Gulab Ayubkhan Pathan Vs. District Collector, Ahmednagar & Anr.***, reported in ***2010(1) ALL MR 163***, it's para No.14 reads as under :

“14. The order impugned in the suit has been issued under Section 48(7) of the M.L.R. Code. True, under Section 247 of the M.L.R. Code, a remedy of appeal has been provided against an order passed by any Officer sub-ordinate to the Sub-Divisional Officer, to the Sub-Divisional Officer or such Assistant or Deputy Collector, as may be specified by the Collector in this behalf. A remedy of further appeal has also been provided. The M.L.R. Code does not contain any provision that expressly takes away/excludes jurisdiction of a Civil Court. Section 158 of the M.L.R. Code speaks of exclusion of Civil Court's jurisdiction in respect of a claim to have an entry made in any record or register maintained under Chapter X (Land Records) or to have any such entry omitted or amended.”

7. The learned Advocate for the appellants lastly submitted that no such defence of bar of suit was pleaded therefore, judgments of the First Appellate Court are not legal and correct and it deserves to be set aside.

8. The learned Advocates for the respondent No. 4 and 5 submitted that new defence/point is raised for the first time before the High Court. It is not substantial question of law. It must go to the root of the matter. They further submitted that raising such plea

whether permissible or not is the substantial question of law. He therefore, prayed to dismiss the appeals.

9. The learned Advocate Mr. Abhay Sambre for respondent No.6 submitted that suit is barred under Section 158 of the MLR Code and not maintainable. Therefore, it is prayed to dismiss the appeals.

10. The learned Assistant Government Pleader Mr. M.A. Kadu for respondent Nos. 8 and 9 submitted that as per the layout plan sanctioned on 27.06.1991, sale-deed was executed in favour of the appellants on 20.02.2001. The permission for non-agricultural use/order is at Exhibit-58. It is passed by the Collector on 27.07.1991. Layout plan at Exhibit-69 was sanctioned on 27.06.1991. The suit is filed in the year 2011. He submitted that there is no any justification for such prayer and relief claimed in the Civil Court. It is because the appeal is provided against the N.A. Order of the Collector as per provisions of the MLR Code.

11. Perused the Judgment of the trial Court as well as first Appellate Court.

12. The Section 158 of the MLR Code reads as under :

“Section 158. Bar of suits.

No suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter or to have any entry omitted or amended.”

13. Raising of legal defence/plea in each case is not necessary when matter is contested and during arguments it is pointed out that basically suit is not maintainable, such plea can be raised in the appeal. It is because principle of pleading is that, “Law need not be pleaded”. Admittedly, the plaintiffs have purchased the suit property by the registered sale-deed dated 20.02.2001 and suit is filed in the year 2011. The layout plan of suit plot etc. was sanctioned on 27.06.1991 by the Collector as per the provisions of MLR Code. The N.A. Order was passed thereafter, on 27.07.1991. Those orders are not challenged before the higher revenue authorities as provided in the MLR Code. Thus, equally efficacious remedy was available to the plaintiffs. Further the prayer regarding open-space, garden etc. cannot be granted by the Civil Court. The civil Court cannot interfere in the jurisdiction exercised by revenue authorities without any legal justification. Therefore, the authorities cited by learned Advocate for the appellants are not useful to the case of the appellants.

14. The suit is barred under Section 158 of the MLR Code. Even if, no such plea was raised during the trial and it was raised in the first appeal is permissible in law. There is no any illegality or perversity in the impugned judgment of the first appellate Court. On the contrary, the judgment and decree of the trial Court shows that though suit is expressly barred on the point of jurisdictional as per Section 158 of the MLR Code. In the case of the ***Damaciano Fernandes Vs. St. Anthony's Chapen & Anr.***, reported in ***2015(3) Mh.L.J. 713***, it is held that Civil Court has no jurisdiction to give direction to Revenue Authorities to delete or enter one's name from Survey record. In the case of ***Narendra Raikar Vs. Amaral Pereira***, reported in ***2007(3) Mh.L.J. 252***, it is held that Civil Court cannot given direction to survey officer by a decree to amend Survey record. Considering above reasons, case law cited on behalf of the appellants are not useful to them. Hence, it is not relied upon.

15. The judgments and decrees passed by the first Appellate Court are legal, correct and no interference is warranted in it. There is no substance in the grounds of objections of the appeals as well as the argument of the learned Advocate for the appellants. The substantial questions of law as to bar under Section 158 of the MLR Code are therefore answered that suit is barred as the law need not

be pleaded. However, it is observed by both Court that plea of maintainability is taken in the written statement by the defendants therefore it cannot be accepted that plaintiffs were not having notice/ knowledge of the defence of maintainability. The cognizance of civil suit cannot be taken regarding revenue matters. Therefore, all these three appeals deserve to be dismissed. Hence the following order :

All these Appeals are **dismissed**. No costs.

(SANJAY A. DESHMUKH, J.)

Kirtak