



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRA NO. 170 OF 2023

**RAGHUNATH CHINDHU PATIL AND ANOTHER
VERSUS
SINDHUBAI BHASKAR CHINCHOLE AND OTHERS**

...

Mr. P. P. Dhorde, Advocate for the Applicants

.....

CORAM : S. G. CHAPALGAONKAR, J.

Dated : 05th FEBRUARY, 2025

PER COURT :-

1. Applicants impugn the order dated 16.03.2023 passed by Joint Civil Judge Junior Division, Jalgaon below Exhibit 67 in Regular Civil Suit No.95 of 2017, by which the prayer of applicants/original defendants for rejection of plaint under Order 7, Rule 11 of Civil Procedure Code has been declined.
2. The respondents / plaintiffs instituted Regular Civil Suit No.95 of 2017, seeking declaration and perpetual injunction that they have right of way as specified in the plaint. The defendants appeared in the suit and filed application seeking rejection of plaint on the ground that the suit is filed on the basis of fictitious cause of action and same is barred by limitation.
3. The Trial Court, after considering rival contentions,

rejected application vide order dated 16.03.2023. Hence, this Revision Application.

4. Mr. Dhorde, learned advocate appearing for the applicants invites attention of this Court to the order dated 14.10.2016 passed in Writ Petition No.10292 of 2013 and submits that plaintiff had already raised the dispute as regards to right of way in *Rasta Case No.02 of 2011* that has been finally decided by order of this Court in Writ Petition No.10292 of 2013 and the plaintiffs were granted limited right to use the common bandh as footpath and, therefore, the controversy was set at rest. The present suit is therefore, beyond the period of limitation so also sans cause of action.

5. Having considered submissions advanced and reasons as given by the Trial Court, it is apparent that while disposing Writ Petition No.10292 of 2013 vide order dated 14.10.2016, this Court granted liberty to both the parties to approach Civil Court and establish their substantive rights. The proceeding decided under the provisions of Mamlatdars' Court Act is always subject to decision of the Civil Court. Plaintiff has pleaded continuous cause of action to file present suit due to

persistent obstructions by the defendants to use the suit way. The plaintiff has, therefore, prayed for declaration of his right to way and perpetual injunction against the defendant from obstructing the use of way. Apparently, plaintiff would have continuous cause of action.

6. So far as, the contention as to the limitation is concerned, the plaintiffs state that cause of action to file the suit arose after decision of this Court in Writ Petition No.10292 of 2013. Looking to the liberty granted by this Court to file suit in favour of both the parties, plaintiff can definitely seek declaration of his right to use the pathway. It would be dependent upon the evidence laid before the Trial Court if suit is within limitation. At this stage, on the basis of the statement in the plaint, definite conclusion can not be drawn on the point of limitation.

7. In that view of the matter, no infirmity is found in the order passed by the Trial Court. Civil Revision Application sans merits, hence **dismissed**.

(S. G. CHAPALGAONKAR, J.)

...