

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.180 OF 2025

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Subhash Anandrao Sabale

...Applicant/ Ori.
Defendt. No. 1

VS.

Mangesh Shashikant Sabale and Others

...Respondents

Mr. P.B. Gujar, for the Applicant.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 27, 2025

P.C:

1. Heard the learned counsel for the applicant.
2. This revision is directed against an order dated 17th February, 2025 passed by the learned Civil Judge, Satara on an application for rejection of the plaint (Exh.18) purportedly under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that the suit was barred by the provisions of section 4A of the Bombay Revenue Jurisdiction Act, 1876 (the Act, 1876).
3. The applicant/ defendant No. 1, filed a proceeding under section 143 of the Maharashtra Land Revenue Code, 1966 (the Act, 1966) for the right of way over the boundaries of the lands, including that of Gat No. 832, situated at Mouje Shivthar, Satara (the suit property) against respondent no. 1 and others, before the Tahsildar, Satara. Certain orders were passed in the said proceeding. Referring to the orders passed in the said proceeding

and the manner in which the said proceedings were allegedly conducted to the prejudice of respondent No. 1, the later instituted a suit seeking to restrain the petitioners from causing obstruction to the peaceful possession and enjoyment of the suit property.

4. In the said suit, the petitioners filed an application for rejection of the plaint asserting that the suit was barred by the provisions of section 4A of the Act, 1876 as the suit was instituted to prevent the authorities under the Maharashtra Land Revenue Code from performing their duties or avoid the order that may be passed in such proceeding. By the impugned order, the learned Civil Judge was persuaded to reject the application.

5. Mr. Gujar, the learned counsel for the applicant, submitted that the suit has been instituted for injunction simplicitor without impleading the Tahsildar and other authorities of the State as party defendants. In the wake of the application filed by defendant No. 1 under section 143 of the Code and the orders passed therein, in the absence of a relief of declaration that the action of Tahsildar and the authorities under the Code was illegal, null and void, or otherwise mala fide, the suit for simpliciter injunction was not maintainable. Inviting attention of the Court to the provisions contained in section 4A of the Act, 1876, Mr. Gujar submitted that the avowed purpose of the suit was to avoid the order that may be passed under the Code

and was, thus, in teeth of section 4A of the At, 1876. To buttress this submission, reliance was placed on a decision of the Supreme Court in the case of **Ram Singh and Others vs. Gram Panchayat Mehal Kalan and Others**¹.

6. I have carefully perused the averments in the plaint. It is well recognized that the bar under the Act, 1876 does not operate where it is alleged that the authorities under the Code are acting beyond their jurisdiction or the orders are passed in flagrant violation of the fundamental principles of the judicial process.

7. In the case at hand, upon a meaningful reading of the plaint, it becomes evident that the plaintiff has assailed the legality and validity of the action of Tahsildar quite elaborately and sought to restrain the applicant from causing obstruction to the plaintiff's possession and cultivation of the suit property on the strength of the alleged illegal orders of the revenue authority. In such a situation, prima facie, the bar under the Act, 1876 does not come into play. Even otherwise, it is imperative to note that section 143(4) of the Code, 1966 provides that any person aggrieved by a decision of the Tahsildar may institute a civil suit to have it set aside or modified.

8. In the case at hand, the plaintiff had initially resorted to the remedies under the Code, 1966. It is the grievance of the plaintiff

¹ (1986) 4 SCC 364.

that, upon remand, matter is being proceeded with by the Tahsildar in breach of the fundamental principles of the judicial process. If the plaint is read as a whole, it falls within the ambit of sub section (4) of Section 143 of the Code, 1966 which enables the aggrieved person to institute a civil suit. Thus, the learned Civil Judge does not seem to have committed any error in rejecting the application for rejection of the plaint.

9. The applicant, thus, stands rejected.

(N. J. JAMADAR, J.)