

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 13 OF 2025
WITH
INTERIM APPLICATION NO. 141 OF 2025
IN
SECOND APPEAL NO. 13 OF 2025**

Vijay Jaysingrao Patil

.....Appellant

Vs.

Tukaram Balkrishna Jadhav and ors

.....Respondents

Mr. Pradeep J. Thorat a/w Ms. Aditi S. Naikare for the appellant

CORAM : GAURI GODSE, J.

DATE : 29th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees dismissing the plaintiff's suit for a declaration in respect of an order passed under sub-Section(7) of Section 48 of The Maharashtra Land Revenue Code, 1966 ('MLRC'). The prayer in the suit is for a declaration that the order is not binding upon the plaintiff. The second prayer is for an order of injunction restraining defendant no. 17

(Tahsildar) from recovering the amount as per the said order.

2. Learned counsel for the appellant submits that the order purportedly passed under sub-Section(7) of Section 48 of MLRC is not an order passed as contemplated under the said provisions. Hence, according to the learned counsel for the appellant, the order which is the subject matter of the suit cannot be construed as an order under sub-Section(7) of Section 48 of MLRC. He further submits that both the Courts have accepted the plaintiff's contention regarding the plaintiff carrying out excavation only from his property as per the permissions granted in his favour which were placed on record. To support his submissions, learned counsel relies upon the findings recorded by the trial Court on issue nos. 1 and 2 in paragraph 29 of the Appellate Court's judgment. He submits that the first Appellate Court concludes that the plaintiff had established excavation under the permission given to him and payment of royalty; however, inspite of recording a positive finding in favour of the plaintiff, erroneously confirmed the dismissal of his suit.

3. Learned counsel for the appellant further submits that the defendants failed to prove the Panchanama on record based on which

the order which is the subject matter of the suit was passed. He submits that as the plaintiff produced on record the permissions in his favour and the payments made by him towards the royalty amount, it was burden upon the defendants to prove the calculations made in the order calling upon the plaintiff to make payment towards royalty and penalty. He submits that both the Courts have erroneously casted a negative burden upon the plaintiff to show that the calculations made in the order are incorrect. Learned counsel for the appellant thus, submits that the aforesaid grounds would raise substantial questions of law. He submits that both the Courts have failed to correctly appreciate the evidence on record and casted a negative burden upon the plaintiff. Hence, the learned counsel for the appellant submits that the second appeal would require consideration on these grounds which raise substantial questions of law,

4. I have perused the papers of the second appeal. Admittedly, the plaintiff has never challenged the order imposing the royalty and penalty. The prayer in the suit is only for a declaration that the order is not binding upon the plaintiff. The prayer is based on the plaintiff's contention that he has excavated only as per the permissions granted to him in his property and he has already paid the royalty amount as

per the permissions. The plaintiff has not raised any challenge to the validity of the order. Admittedly, there is no appeal filed as provided under MLRC to challenge the order. Based on the first prayer that the order is not binding upon him, the plaintiff has prayed for an order of injunction that defendant no. 17 be restrained from recovering the amount as per the order.

5. I have perused the order under question. The order is passed under sub-section(7) of Section 48 of MLRC. I do not find any substance in the arguments raised on behalf of the appellant that the order cannot be termed as an order under sub-section(7) of Section 48 of MLRC. Admittedly, prior to issuing the said order, a notice was issued to the appellant and the reply was also submitted. After examining the reply, the order is passed on the ground that the plaintiff has carried out illegal excavation from Gat No. 1335/1. The plaintiff's contentions that entire Gat Number is not exclusively owned by the plaintiff would not be of any consequence for imposing royalty and penalty for illegal excavation. The order is not challenged under the provisions of MLRC. The order is not challenged even in the suit on the ground of any illegality or on the ground of any jurisdictional error. In view of these facts, both the Courts have rightly casted burden upon

the plaintiff to prove that the excavation carried out by him was only to the extent of the permissions given to the plaintiff. Since, the order imposing penalty was never challenged, both the Courts had no reason to disbelieve the supporting documents, based on which the order was passed.

6. Considering the plaintiff's pleadings, both the Courts have partially accepted the plaintiff's contention regarding excavation carried out by the plaintiff in terms of the permissions granted to him. However, by examining the evidence on record, both the Courts have held that the permissions and receipts produced by the plaintiff on record, do not support his contentions that the entire excavation work carried out by the plaintiff was restricted only to the permission granted by the authorities.

7. In view of the limited reliefs claimed by the plaintiff in the suit, the validity and the contents of the order which is never challenged by the plaintiff is not required to be examined by this Court in the second appeal. The findings recorded by both the Courts are based on appreciation of the evidence produced on record. I do not see any illegality or perversity in the reasons recorded by both the Courts. The

grounds argued on behalf of the appellant regarding the calculations of the royalty amount and the penalty amount and the extent of excavation would amount to reappreciation of the pleadings and evidence on record which is not permissible under section 100 of Code of Civil Procedure, 1908. None of the grounds argued on behalf of the appellant would raise substantial question of law in the second appeal.

8. Hence, the second appeal is dismissed.

9. In view of dismissal of second appeal, Interim Application No. 141 of 2025 is disposed of as infructuous.

[GAURI GODSE, J.]