

(2021) 09 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No.6240 Of 2021

Bhagwat Buasaheb Phunde

APPELLANT

Vs

Rama Srihari Ghule And Others

RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 227

Mamlatdar's Courts Act, 1906 — Section 5, 5(2), 5(3), 7, 7(d), 7(e), 8, 9, 12, 13, 14, 19, 19 (1)(c)(3), 23(2)

Citation : (2021) 09 BOM CK 0020

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Shaikh Tarek Mobin, A.G. Ambetkar, R.B. Bagul

Final Decision : Dismissed

Judgement

Sandeep K. Shinde, J

1. Rule.

2. Rule made returnable forthwith. Heard both sides by consent for final disposal.

3. Instant petition challenges order dated 21st May, 2020 passed by Tahsildar under Section 5(2) of the Mamlatdar's Courts Act, 1906 and order dated 3rd March, 2021 passed in RTS Revision No. 68/2020 under Section 23(2) of the Mamlatdar's Courts Act ('Act' for short), passed by the Sub-Divisional Officer, Pathardi Division, Pathardi.

4. Factual Matrix : On 15th July, 2021, the Respondents herein sought preventive injunction against the Petitioner from obstructing them, from using the road that passes through the Gut No. 20 and to remove impediment caused by him thereto. Tahsildar vide order dated 6th March, 2012 granted the injunction. In Revision at the instance of the Petitioner, the Sub-Divisional Officer vide order dated 22nd July, 2012 set aside the injunction order and remanded the proceedings to Tahsildar for re-consideration and directed to conclude the

proceedings within three months. In the mean while, parties were directed to maintain status-quo. Unfortunately, Tahsildar concluded the proceedings on 7th March, 2019 (after eight years), whereby directed the Petitioner to remove impediment to use of suit road and restrained him from causing disturbance or obstruction to the use of suit road. The order of the Tahsildar was confirmed in Revision by the Sub-Divisional Officer vide order dated 3rd March, 2021. It is against this order of the Sub-Divisional Officer, instant petition is preferred under Article 227 of the Constitution of India.

5. Petitioner would argue that the Courts below have committed obvious error in entertaining the plaint, without first ascertaining, whether suit was brought within six months from the date on which the cause of action arose. Submission is that plaint presented by the Respondents on 15th July, 2011 does not contain particulars required in terms of Section 7, Clause (d) and (e) i.e. as to the date on which the cause of action arose and the circumstances out of which the cause of action arose and therefore Mamlatdar ought to have rejected the plaint under Section 12 of the Mamlatdar's Courts Act. Reliance was placed on the judgment of this Court in the case of Vishnu Sukhdev Ghanvat and Ors. Vs. The Collector, Ahmednagar and Ors. 2017(1)Mh.Lj.811; wherein learned Judge of this Court has held that the "provisions of Sections 19 and Section 5(3) of the Act would show that suit needs to be brought within six months from the date of cause of action and this is mandatory in nature."

6. On the other hand, learned Counsel for the Respondents and the State supported the impugned orders and would contend that objections as to admissibility of the plaint for want of particulars, as to when cause of action arose, was not taken before the Tahsildar. It is submitted that the objections of this kind cannot be taken and or entertained for the first time, in Writ Petition and that too, after two rounds (original and in remand), while concurrent findings of facts have been recorded by two fact - finding authorities against him.

7. To appreciate contentions of respective Counsel, it would be expedient to reproduce relevant provisions of the Mamlatdar's Courts Act. Provisions read as under;

"Section 5(3) : No suit shall be entertained by Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose."

"Section 7(d) : All suits under this Act shall be commenced by a plaint, which shall be presented to the Mamlatdar in open Court by the Plaintiff and which shall contain the date on which the cause of action arose."

8. Section 5 of the Act, empowers the Mamlatdar (i) to give immediate possession of lands or premises used for agriculture to any person, who has been dispossessed, otherwise than by due course of law or (ii) restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person, who has been deprived thereof, otherwise than by due course of law or to give possession, who has become entitled to the

possession or restoration thereof by reason of the determination of any tenancy or (iii) to give possession to any other person (other than former owner or part-owner) by reason of other right of such person, subject to suit instituted within a period of 12 years and to injunct any person, other than in due course of law, obstruct or disturb any person in possession of any lands used for agriculture or grazing or trees or crops or fisheries or causes obstructions to use of roads.

9. The suit seeking relief under Section 5 of the said Act, is required to be filed within six months from the date on which cause of action arose.

10. Section 7 contemplates that all suits under this Act shall be commenced by plaint, presented to the Mamlatdar in open Court and it shall contain such particulars enumerated therein, which includes the particulars as to date on which cause of action arose.

11. Section 8 of the Act provides as to how informal petitions are to be dealt with. Thus to be stated; when the petition is not in the form of a plaint but the subject matter falls within the scope of Section 5, Mamlatdar is duty bound to explain the person presenting the petition the nature of the reliefs afforded by this act and shall inquire whether petitioner desires to obtain relief thereby. If Petitioner expresses a desire to obtain relief, the Mamlatdar shall endorse the desire of the petition, which shall thereupon be deemed to be a plaint presented under Section 7.

12. In the case in hand, the petition presented by the Respondents was informal petition; however the proceedings do not indicate that the Mamlatdar has exercised jurisdiction under Section 8 before admitting the informal petition as a plaint. Section 9 casts a duty on the Mamlatdar, to examine the plaint to verify whether claim contains the particulars specified in Section 7. If plaint does not contain the particulars, Mamlatdar shall examine the Plaintiff upon oath and ascertain from him, such of the particulars in Section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on the plaint, which shall be deemed to be part of the plaint.

13. It may be stated the petition filed by the Respondents was not containing the particulars as to when the cause of action arose; yet Mamlatdar had neither examined the Plaintiff on oath to ascertain this fact nor endorsed it on the plaint.

14. Section 12 of the Act empowers the Mamlatdar, to reject the plaint, where it appears on the face of the plaint, that the cause of action arose more than six months before the plaint was presented.

15. Section 13 empowers the Mamlatdar to return the plaint, where it appears that the subject of the plaint is not within his jurisdiction.

16. Section 14 lays down the procedure to be followed, where a plaint is admissible.

17. Section 19 empowers the Mamlatdar to proceed to hear all the evidence and also try the issue including the issue of limitation; that to say whether disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months from the suit was filed.

(emphasis supplied)

18. Herein, Respondents had presented informal petition within the meaning of Section 8 of the said Act. Although it was not containing the particulars, as to the date on which the cause of action arose, Mamlatdar did not examine the Plaintiff on oath to ascertain this fact. The scheme of the act command, when the plaint on the face of it does not disclose as to when the cause of action arose, the plaint is to be rejected under Section 12 of the said Act. Thus, what appears from the scheme of the Act is that, before admitting the plaint under Section 14 of the Act, Mamlatdar shall look over the informal petition to ascertain whether it contains the particulars specified in Section 7; and if not, he shall examine the Petitioner to ascertain this fact. Whereafter if he is prima-facie satisfied that cause of action arose more than 6 months before the plaint was presented, he shall reject the plaint. Therefore, it is to be noted Mamlatdar shall admit the plaint after he follows the procedure contemplated under Section 8 and 9 of the Mamlatdar's Courts Act. Admittedly, in the case in hand, informal petition presented by the Respondents was not containing the particulars as to when the cause of action arose. In spite of this fact, Mamlatdar admitted the plaint. Whereafter he proceeded to take all the evidence after framing the issue, as required under Section 19 of the Act. It may be noted that although the Petitioner had participated in the proceedings on two occasions (original and on remand), he did not seek rejection of plaint on the ground that the cause of action arose six months before the presentation of the plaint. Nor did he pleaded this defence in his reply/ written statement. Obviously, in absence of such defence, appropriate issue, "whether disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months from the suit was filed." could not be framed.

19. Indisputably, objections as to admissibility of a plaint, was not raised in the written statement or in a reply filed by the Petitioner before the Mamlatdar's Court. Nearly after eight years, for the first time, the Petitioner is seeking rejection of the plaint under Section 12 of the Mamlatdar's Courts Act. Although the scheme of the act does not expressly provide that power under Section 12 should be exercised at a particular stage only, but the scheme of the act implies, that party can seek rejection of the plaint before it is admitted under Section 14 of the act or by raising objection in written statement as to admissibility of the plaint to enable the Mamlatdar to frame the issue in terms of Section 19 (1)(c) (3) of the Mamlatdar's Courts Act. While it is true that ordinarily, the preliminary objection as to maintainability of the plaint on the ground of absence of cause of action should be raised by the respondent as early as possible but if a party raises objections after filing written statement the preliminary objection cannot

be ignored. Indisputably, herein objection as to maintainability of the plaint and its consequent rejection was not sought, either before admitting the plaint or in the written statement.

20. In consideration of the facts of the case and in view of the scheme of the act and for the reasons stated, in my view the petition must fail. Accordingly, Petition is dismissed with no order as to costs.