

(2024) 09 BOM CK 0018

In the Bombay High Court

Case No : Criminal Revision Application No. 146 Of 2022

Jarasand Suryabhan Borkar

APPELLANT

Vs

Bhagwat Suryakant Kale And Ors

RESPONDENT

Date of Decision : 02-09-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 9, Order 7 Rule 11, Order 7 Rule 11(d)
Maharashtra Land Revenue Code 1966 — Section 143, 143(1), 143(3), 143(4), 143(5)
Limitation Act — Article 58, 113

Citation : (2024) 09 BOM CK 0018

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : Arun G. Dalal, Vikas G. Kodale, D.V. Tele

Final Decision : Dismissed

Judgement

Sandipkumar C. More, J.

1. Heard rival submissions at the admission stage.

2. Being aggrieved by the order dated 11.08.2022, passed by the learned Civil Judge, Senior Division, Latur i.e. learned trial Court, below Application Exh.40 in Regular Civil Suit No. 32 of 2021, the present applicant i.e. the original defendant No.3 in the aforesaid suit has filed this application. Under the impugned order, the learned trial Court has rejected the application (Exh.40) filed by the present applicant for rejection of the plaint under Order VII Rule 11 (d) of the Code of Civil Procedure.

3. Background facts leading to the present application are as under :-

The present applicant on 19.07.2018 had filed an application bearing proposal No. KV-90 of 2018 for grant of approach road/way to his agricultural land situated at Jawala (Bk.) Taluka and District Latur having Gut No. 115 admeasuring 2 H 73 R, under Section 143 of the Maharashtra Land Revenue Code 1966 (hereinafter referred to as for the brevity as "the Code"). The learned

Nayab Tahsildar, Latur adjudicated the said application under the provision of the Code and vide order dated 04.02.2019 granted an approach way to the applicant as mentioned therein. Present Respondent Nos. 1 and 2, who are the original plaintiffs in the aforesaid suit, had filed appeal against the said order of Nayab Tahsildar, Latur dated 04.02.2019 before the Sub Divisional officer, Latur bearing proposal No. 2019/IOR/27, but the same was dismissed by the concerned Sub Divisional Officer vide order dated 07.12.2020. Thereafter, on 14.06.2021, the applicant preferred an application before the concerned Tahsildar for carving out the said approach way and accordingly the Land Measurement Authorities in presence of panchas carved out that approach road. However, present respondent Nos.1 and 2 then filed aforesaid civil suit bearing Regular Civil Suit No. 32 of 2021 before the learned trial Court and thereby challenged the legality and validity of the order dated 04.02.2019 passed by the concerned Nayab Tahsildar Latur. The present applicant had also submitted his written statement on 11.01.2022 to resist the suit, but thereafter on 21.02.2022 he filed an application at (Exh.40) for rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure.

4. In the said application (Exh.40), it was contended by the present applicant that the suit filed by respondent Nos. 1 and 2 is not maintainable before the Civil Court for want of specific legal provision. It was also contended that even under Section 143(4) of the Code, the suit was not within limitation as it is filed beyond the period of limitation mentioned therein. It was also contended that under sub section (4) and (5) of Section 143 of the Code, the suit is barred since the plaintiffs had already exhausted remedy of appeal/revision against the order dated 04.02.2019 passed by the concerned Nayab Tahsildar. The learned trial Court, vide impugned order, has rejected the application of the present applicant/defendant No.3 and hence this Civil Revision Application.

5. The learned counsel for the applicant pointed out that under Sub Section (3) of Section 143 of the Code, the remedy against the Tahsildar's decision was to file appeal and revision which respondent Nos.1 and 2 had already availed and therefore, under Sub Section 4 of Section 143 of the Code, the suit filed by respondent Nos. 1 and 2 after one year of the order of concerned Tahsildar, is barred by limitation mentioned therein. He pointed out that when the remedy under Sub Section (3) of the said section of the Code was already availed by respondent Nos. 1 and 2, then they were not having any remedy of filing suit under Sub Section (4) of Section 143 and that too beyond the period of one year mentioned therein. He pointed out that the learned trial Court definitely erred in holding that the suit of respondent Nos. 1 and 2 was well within limitation by observing that the appeal filed by respondent Nos. 1 and 2 against the decision of Tahsildar was continuation of the original proceeding. According to him, the learned trial Court also erred in holding that the issue of limitation is mixed question of law, for which evidence is required.

6. On the contrary, the learned counsel for respondent Nos. 1 and 2 strongly

opposed the submissions made on behalf of the applicant and supported the impugned order. He reiterated the observation of learned trial Court that limitation is mixed question of law and facts, and therefore, requires evidence. Besides he contended that the suit of respondent Nos. 1 and 2 is not only for challenging the order of Tahsildar, but also for perpetual injunction and therefore, partial rejection of the suit is not permissible. According to him, the Civil Court is having jurisdiction under Section 9 of the Code of Civil Procedure when there is no express bar for filing such suit by respondent Nos. 1 and 2. In support of his submissions he relied upon the following judgments/orders.

(I) Ramkanya Bai And Another Vs. Jagdish And Others (2011) 7 Supreme Court Cases 452

(II) High Court of this Bench in the case of Sanjay Kerba Kadam And Another Vs. Manchak Kondiba Kadam and Another CRA No. 126 of 2022

(III) State of Tamil Nadu Versus Ramalinga Samigal Madam K.L.M. ramamurthy 1986 (SC) 794 :

(IV) Hero Vinoth (Minor) Versus Sheshmmal Supreme Court Reports (2006) SUPP. 2 S.C.R.

(V) Shalini Laxman Wadnerkar Vs. Bank of Baroda Employees Co-operative Housing Society Ltd and Another (2006(3)Mh.L.J.)

7. After going through the impugned order, it is evident that the learned trial Court has rejected the application for rejection of the plaint mainly on two grounds that under Section 143(5) of the Code, there is no bar to file suit after the aggrieved party filed revision or appeal before the Superior Revenue Authority against the order of Tahsildar and that the suit was barred by law of limitation of one year which is specifically prescribed in Sub Section (4) of Section 143 of the Code. The learned counsel for respondent Nos. 1 and 2 heavily relied on the order of this Court dated 8th March 2023 in Civil Revision Application No. 126 of 2022 wherein the same situation had arisen. In that case also the plaintiffs had challenged order of Tahsildar before the Sub Divisional Officer and Deputy Collector, Parbhani and being unsuccessful there, subsequently challenged the order of Tahsildar by way of suit before the Civil Court when it was barred by limitation prescribed in Section 143(4) of the Code. However, this Court, while rejecting the said Civil Revision Application, had not dealt with the aspect of suit being barred by limitation under Section 143(4) of the Code, but rejected the said application only by observing that partial rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure was not permissible as the plaintiffs had also claimed perpetual injunction in that suit. The learned counsel for respondent Nos. 1 and 2 submitted that respondent Nos. 1 and 2/plaintiffs have also claimed perpetual injunction in their suit, and therefore, the aforesaid order of this Court squarely applies to the present matter. However, on going through the prayers made in the plaint by respondent Nos. 1 and 2, it appears that they have sought injunction against the applicant/

defendant No.3 for not to use the road granted under the order of Tahsildar. Thus, the relief of perpetual injunction is not an independent relief, but indirectly respondent Nos. 1 and 2 are claiming stay to the order of learned Tahsildar which is under challenge. Thus, by claiming such relief of injunction, the challenge is made to the order of Tahsildar and therefore, it has to be seen that whether the same can be challenged by way of civil suit and whether it is barred by limitation in view of Section 143(4) of the Code.

8. Further, the learned counsel also relied on the judgment of the Hon'ble Apex Court in the case of Ramkanyabai Vs. Jagdish wherein jurisdiction of Civil Court under Section 9 of the Code of Civil Procedure viz-a-viz Section 131, 142 and 257 of the Madhya Pradesh Land Revenue Code, 1959 is discussed. The Hon'ble Apex Court in the said judgment, by referring the judgment of its Constitution Bench in the case of Dhulabai Vs. State of Madhya Pradesh, has observed that the decision of Tahsildar will not be a bar to a subsequent civil suit by either party to the proceeding. However, in the instant case, there is no express bar provided by special statute i.e. M.L.R Code 1966 for filing suit, but certain period of limitation i.e. of one year is provided for challenging the decision of the Tahsildar under Sub Section (4) of Section 143 of the Code. The learned counsel for the applicant has raised the following important issue for consideration.

(i) Whether the order passed by Tahsildar under sub Section (1) of Section 143 of the Code can be challenged before the Civil Court even after availing appeal or revision under the provisions of the Code and beyond the period of limitation prescribed in Sub Section 4 of Section 143 of the Code ?

9. To answer the aforesaid issue raised by the learned counsel for the applicant, the jurisdiction of civil Courts under Section 9 of the Code of Civil Procedure is to be understood first. As per Section 9 of the Code of Civil Procedure, the Civil Court shall have jurisdiction to try all the suits of civil nature, except the suits, the cognizance of which has been barred either expressly or impliedly, by enacting special Acts. That means, when the special statute for dealing with certain subject matters is enacted, wherein the exclusion of jurisdiction of civil Court is stated, it can be observed by plain reading of such barring provision of the said special Act. Here in this matter, the learned counsel for the appellant is claiming that Maharashtra Land Revenue Code is the special Act here, wherein a special provision under Section 143 (3) is provided for challenging the decision of Tahsildar by the aggrieved person, but subject to Section 143 (4) and (5). Thus, it can be seen that the special Act itself has provided one mode to approach civil Court to challenge the order of Tahsildar passed under Section 143 with certain limitation i.e. of one year from the date of such order. Now the question is posed that when the remedy for filing of appeal or revision against the order of Tahsildar is already exhausted under Section 143(3) of the Code, by either of the parties, then whether the said party can invoke remedy under sub Section (4) of Section 143 of the Code thereafter ?

10. Under these circumstances, it has to be borne in mind that under the

common law, all suits of civil nature unless barred can be filed in the Civil Court in view of Section 9 of the Code of Civil Procedure. Moreover, it is also common that the orders of Revenue Court passed while exercising original or appellate jurisdiction, are always subject to inherent jurisdiction of the Civil Court. So far as barring provision under the special statute in respect of jurisdiction of civil Court is concerned, one must go through Section 143 of the Code which is reproduced hereinafter for quick reference.

Section 143 Right of way over boundaries

“(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar’s decision under this Section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this Section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar’s decision, such decision shall not be subject to appeal or revision.”

11. On plain reading of the provisions made under the aforesaid Section, it is evident that there are two options available for the aggrieved person to challenge the decision of the Tahsildar. Under sub Section (3), the aggrieved person can challenge the decision of Tahsildar by way of appeal and revision provided under the provision of the Code. But the said option is always subject to sub Section 4 and 5 of Section 143 of the Code. Under sub section (4) an option for challenging the decision of the Tahsildar is to file civil suit within one year from the date of order of Tahsildar. Further, under sub Section (5) it is provided that once the remedy of filing civil suit under sub section (4) is availed, then the remedy of appeal or revision under sub section (3) is barred. Thus, it is most important to note that though sub section (5) expressly provides bar to file appeal or revision under the Code in case an aggrieved party chooses the course of filing the civil suit, but the vice versa situation is not available in Section 143 of the Code. The legislature has cautiously not barred the remedy of filing civil suit after availing the remedy of appeal or revision under the Maharashtra Land Revenue Code. Thus, it can be seen that there is no express bar to file civil suit after availing the appeal or revision under the Maharashtra Land Revue Code. Therefore, in view of Section 9 of Code of Civil Procedure, the order of Tahsildar passed under Section 143 of the Code being passed by a Revenue Officer can always be a subject matter of civil suit before the Civil Court under the common law. Therefore, from the language of Section 143 (4) itself, it has been made abundantly clear that

the remedy provided to approach civil Court against the decision of Tahsildar, is an independent remedy at intermediate stage, but it cannot be inferred in any manner that while giving such remedy, the order of Tahsildar cannot be challenged before the Civil Court after availing the remedy of appeal or revision under the Code.

12. The learned counsel for the appellant submits that even if it is presumed that there is no bar for challenging the order of Tahsildar before the Civil Court, but under Section 143(4) a specific period of limitation of one year from the date of order of Tahsildar is provided for filing suit against the decision of the Tahsildar. He pointed out that in the present case, the order of Tahsildar was passed on 04.02.2019, and the suit for challenging the same has been filed on 18.01.2021, which is definitely barred by the limitation prescribed in sub section (4) of Section 143 of the Code. Admittedly, the present suit for challenging the decision of Tahsildar dated 04.02.2019 has been filed beyond the period of limitation mentioned in Section 143(4). The learned trial Court, in the impugned order has observed that since the remedy of appeal preferred before the Sub Division Officer Latur was the part of original proceeding, the suit filed before the Civil Court within one year of the decision in said appeal, was well within limitation. Apparently, the aforesaid observations of the learned trial Court is not convincing in the light of specific wording of Section 143 of the Code. However, when there is no express bar for challenging the decision of Tahsildar by way of civil suit even after availing the remedy of appeal or revision under the Code, then the said limitation aspect has to be understood in the light of Articles provided under the limitation Act.

13. Under the Limitation Act of 1963, the declaratory suits are governed by the Article 58 and 113 of the Limitation Act. Under Article 58 of the Limitation Act, the period of limitation of three years is provided for obtaining any other declaration, whereas under Article 113, a limitation of three years is provided for filing any suit for which no period of limitation is provided elsewhere in this schedule. Thus, under common law, when the suit for challenging the decision of the Tahsildar in view of Section 9 of the Code of Civil Procedure is not barred then one will have three years limitation period which would expire in the present matter on 03.02.2022. Admittedly, a period of one year has been provided for challenging the decision of Tahsildar under Section 143(4) of the Code. However, as already held earlier, the remedy under Section 143(4) of the Code is an independent remedy, provided at intermediate stage of the proceeding and therefore, the said period would be applicable only if the decision of Tahsildar is challenged directly without availing remedy of appeal or revision under the Code. However, considering the limitation of three years as provided in the Limitation Act, under Article 58 and 113, the order of Tahsildar being the Revenue Officer under the common law can be challenged in the said limitation of three years by invoking the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure. Therefore, in such circumstances, the period of limitation under sub section (4) of Section 143 of the Code, would not apply to the suit challenging

the order of Tahsildar after availing remedy of appeal or revision under the Code. The present suit filed by respondent Nos. 1 and 2 within three years from the order of Tahsildar under common law, therefore, is well within the limitation.

14. Thus, considering all these aspects, the issue raised by the learned counsel for the applicant as mentioned above, can be concluded with observation that the remedy provided under sub section (4) of Section 143 of the Code, is an optional and additional remedy available for challenging the order of Tahsildar at certain intermediate stage. Further, in absence of specific bar under the special statute that is the Code, the limitation period provided under sub section (4) of Section 143 of the Maharashtra Land Revenue Code will not be applicable to the suit which is govern by Section 9 of the Code of Civil Procedure for challenging the decision of the Tahsildar passed under Section 143 of the Code, even after availing the remedy of appeal or revision under the Code as per Section 143 (3) of the Code. Thus, from this angle, the order of rejection of the application (Exh.40) filed by the present applicant/defendant No.3 for rejection of the plaint can be justified. In view of the same, the present Civil Revision Application stands dismissed at admission stage and accordingly disposed of.