Regular Civil Suit No.15/2018
(**CNR No.MHNG14-000104-2018**)
Ruprao Vs. Kamalabai & another

Order below Exh.14.
(Passed on 27th day of November, 2018)

1. The defendants have moved this application under section 9-A read with Order VII Rule 11 of C.P.C.

2. According to defendants, the plaintiff has filed this suit for declaration, permanent and mandatory injunction. It is the contention of defendants that plaintiff approached to the Tahasildar for right to access. Accordingly, the Tahasildar passed order on 30.06.2012 and directed plaintiff to access his field from southern side Dhura as consented by defendants. It is further contended that plaintiff has not filed appeal against the order of Tahasildar, but he choice to file present suit. So also, according to defendants, the suit is barred by limitation, because order of Tahsildar for the year 2012 is challenged by way of this suit, after lapse of 06 years.

3. The plaintiff resisted the application by filing his reply vide Exh.19. According to him, he has no grievance against the order passed by the Tahsildar, but it is the defendants who resisting him from using the way for which specific remedy is given in section 36 of the Specific Relief Act, therefore this Court has jurisdiction to try the suit. Eventually, he prayed to reject the application with heavy costs.

4. Heard learned counsel Shri Bhupesh Patil for defendants and the learned counsel Shri M.D. Paliwal for the plaintiff.

DISTRICT COURT NAGPUR

5. As regards contentions of defendants that the suit is barred by limitation, it is pertinent to note here that the question of limitation is mixed question of law and facts. Unless and until an issue is framed in this regard and the either parties is given a chance to adduce evidence on this point, in my opinion, the plaint cannot be rejected on this ground alone. Thus, the plea of defendants that the suit is barred by limitation does not hold any water.

6. The learned counsel for the plaintiff has placed his reliance in the case of ***Smt.Ramkanya Bai & another ..vs.. Jagdish & Others*** wherein the Hon'ble Supreme Court of India has held that - "*The decision of the Tahsildar after a summary enquiry with reference to the 'previous custom' and with due regard to the conveniences of all parties, u/s.131(1) of the Code, is open to challenge in a civil suit and subject to the decision of the civil court.*" The above discussion ratio has applicability to the facts of the instant case. In the instant case also, the order of Tahsildar as regards easement right of plaintiff to use the suit way is challenged by way of this suit. In view of above, it cannot be said that this Court has no jurisdiction to entertain, try to decide the suit.

7. Thus, the above discussed facts and circumstances of this case coupled with the ratio laid down in the case cited supra by the learned counsel, I am of the considered view that the present application, being devoid of merits, is liable to be rejected. Hence, I proceed to pass the following order.-

DISTRICT COURT NAGPUR

Order

1. The application Exh.14 is hereby rejected.
2. Costs in cause.

Sd/-
(Sanjay D. Wankhede)
Civil Judge, Junior Division,
Parseoni.

Parseoni.
Date:-27.11.2018.

Argument heard on	19.10.2018
Order passed on	27.11.2018
Transcription ready on	27.11.2018
Order checked and singed on	27.11.2018

CERTIFICATE

I affirm that the contents of this P.D.F. file of common order are word to word, as per original common order.

Name of Stenographer-Abhijit Yeshwant Kulkarni

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