MHNS130018972021	**R.C.S./76/2021** Ambadas Gopal Gaikwad Vs. Kartik Jayram More

ORDER BELOW EXH.01 IN

REGULAR CIVIL SUIT NO.76/2021

1] By order below Exh.1 dated 25/11/2025, both the parties were directed to argue on the point of bar of jurisdiction and limitation of this suit under Order 7, Rule 11 of the Code of Civil Procedure,1908 *(for short "C.P.C.")*.

2] Learned advocate for the plaintiff argued that the suit is filed under Section 138(4) of Maharashtra Land Revenue Code,1966, *(for short "the Code")*. The said provision does not expressly bars jurisdiction of the Civil Court. On the other hand, it bars jurisdiction of Revenue Court, if suit is filed under the said provision. Reliance was placed upon the Judgment of ***Smt.Rajni Madhukar Rankhambe Vs. Sau. Muktabai Ramchandra Pund, (Writ Petition No.1757 of 2016 order dated 21/04/2016)***, to urge that *the Civil Court has jurisdiction to entertain the suit even if, remedy was exhausted under Revenue Jurisdiction.*

3] On the point of limitation it was argued that cause of action arose in the year 2021, when the defendants tried to take possession of the suit property. Therefore, the suit filed within one year is well within limitation.

4] On the other hand, learned advocate for the defendants argued that the plaintiffs had preferred appeal against order of Sub-divisional Officer before the Collector, Nashik. The plaintiffs had also preferred appeal before the Commissioner, Nashik. The appeal before the Commissioner was withdrawn and this suit came to be filed. Once the plaintiffs choose forum of Revenue Jurisdiction, their remedy under Civil Court is impliedly barred.

5] On the point of limitation it was argued that the suit under Section 138(4) of the Code ought to have filed within one year from date of order of Sub-divisional Officer. The order of Sub-divisional Officer was passed in the year 2015. Therefore, the suit filed in the year 2021 is clearly beyond limitation.

6] It is pertinent to note that at the time of deciding application under Order 7, Rule 11 of C.P.C., only averments in the plaint can be taken into consideration to decide bar of jurisdiction.

7] In case of Rajni Rankhambe (*supra*), the same issues of jurisdiction and limitation were involved. In that case, the respondent had availed remedy under Revenue Jurisdiction upto Hon'ble Minister of Revenue. Thereafter, the suit under Section

138(4) of the Code came to be filed. It was held that if party has already invoked the jurisdiction of Civil Court by instituting a suit, in that event, the parties precluded from filing appeal or revision. However, Section 138(4) of the Code does not preclude institution of the suit after exhausting remedy of appeal or revision.

8] In view of law laid down by Hon'ble Bombay High Court, this Court has jurisdiction to entertain the suit.

9] ***Section 138(4) of the Maharashtra Land Revenue Code,1966-***

> *where any person has been ejected or is about to be ejected from any land under the provisions of sub-section (2), he may, within a period of one year from the date of the ejectment or the settlement of the boundary, institute a civil suit to establish his title thereto.*

10] It is clear from the said provision that limitation for filing the suit begins to run from the date of ejectment or the settlement of the boundary. The cause of action may arise in case of the date of ejection or apprehension of ejection. As per averments in the plaint, the defendants tried to take possession of the suit property on 30/08/2021. There is no averment in the plaint when boundaries of the suit property were settled. Therefore, as per pleadings in the plaint, the suit filed in the year 2021 cannot be said to be beyond limitation. However, issue of limitation will have to be kept open on the basis of evidence. Therefore, I hold that this Court has jurisdiction to entertain this suit.

Sd/-
(A. J. Patil)
Dated : 10/12/2025 Civil Judge, (Jr. Dn.)
Pimpalgaon (B).