

Received on : 27/10/2009.
Registered on : 27/10/2009.
Decided on : 26/11/2015.
Duration : Ys. Ms. Ds.
06- 00- 29

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION VENGULA.

(Presided over by D. S. Zanvar)

REGULAR CIVIL SUIT NO.40/2009.

Exhibit No. .

Mangesh Dattaram Madval @ Khanolkar, }
Since deceased by his legal heirs:- }
A) Shri. Sachin Mangesh Madval/Khanolkar }
(Son) Age about 29. Occu.:- Agriculture. }
B) Shri. Sumit Mangesh Madval/Khanolkar, }
(Son) Age about 23, Occu.:- Agriculture }
C) Smt. Chandravadana Mangesh Madval- }
Khanolkar (Wife), Age about 49, }
Occu.:- Household. }
All are R/o. Khanoli, Rawoolwadi, }
Tal. Vengurla, Dist. Sindhudurg. }

Plaintiffs.

Versus.

1) Grampanchayat Khanoli, }
Through Sarpanch, }
Grampanchayat Khanoli, Tal. Vengurla, }
Dist. Sindhudurg. }
2) Gramsevak, }
Grampanchayat Khanoli, }
At post Khanoli, Tal. Vengurla, }
Dist. Sindhudurg. }
3) Shri. Vidhyadhar Balkrishna Prabhu, }
Age about 45, Occu.:- Bagayati, }
Sarpanch, }
Grampanchayat Khanoli, }
Post Khanoli, Tal. Vengurla, }
Dist. Sindhudurg. }

Defendants.

V.O.S.M. Rs.2,000/-

V.O.S.J. Rs.2,000/-

Suit for declaration and mandatory injunction.

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**Advocates Appeared:-**

Advocate Shri. R.S. Gawankar for plaintiffs.

Advocate Shri. S.D. Patil for defendants.

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➤ • J U D G M E N T • ◀

(Delivered today on this 26th November, 2015)

1. This is a suit for declaration in respect of the resolutions passed by the Gramapanchayat Khanoli are illegal, unauthorized, false and not to acted upon with further prayer of mandatory injunction that the Gramapanchayat Khanoli be directed to set aside the said resolutions passed in their monthly meeting.

2. The facts giving rise to the present suit can be summarized as under;-

It is the case of original plaintiff that, the property bearing survey no.38, hissa no.11 situated at village Khanoli, Tal. Vengurla, Dist. Sindhudurg more particularly described in plaint para no.1 (Hereinafter called as 'suit property') is common tenanted property of the plaintiff and other tenants and the plaintiff is in common possession of the suit property alongwith the other tenants. It is further contended by the plaintiff that, in view of the provisions of Bombay Tenancy & Agricultural Lands Act he become deemed purchaser of his share in the suit property and except the plaintiff and other so-sharers, no one concerned with the suit property. It is specific case of the plaintiff that, there is one private foot-way in the suit property, which is exclusively used by the plaintiff and other co-sharers and the said foot-way is never a public way and therefore the Gramapanchayat i.e. defendant cannot claim any right over it. It is also contended by the plaintiff that the area of the said foot-way was neither

acquired under Land Acquisition Act and plaintiff as well as other co-sharers nor get any compensation. In such situation, it is the specific case of the plaintiff that, without taking permission of plaintiff as well as other co-sharers of the suit property, defendant nos.1 and 3 made entry of the said foot-way in the record of Grampanchayat (Form No.26) and for that purpose they have also passed the resolutions in monthly meeting of Grampanchayat dated 29/01/2009 and 26/02/2009. It is alleged by the plaintiff that, the said resolutions were passed illegally and therefore he issued notice to defendants calling them to set aside the said two resolutions passed by them. But, the defendants have given false reply to the said notice and not acted upon the notice issued by the plaintiff. So, in these circumstances, the plaintiff approached to this Court with prayer as enumerated in first para.

3. Defendant no.2 has filed his written statement at Exh.11. His written statement is somewhat neutral. Defendant no.2 admitted the description of the suit property and also possession of the plaintiff as well as other co-sharers over it. He also not disputed the resolutions passed by the Grampanchayat in the monthly meeting. But, as per his contention, while passing resolutions he gave his frank opinion in respect of, to enter the entry of any right to the record of Grampanchayat (Form No.26), there is necessity of map alongwith the 7/12 extract and gift-deed of the owner of the property as well as the tenant and as such the Grampanchayat Khanoli had not possessed the requisite documents, he has opposed the said resolutions. In his written statement he further contended that, resolutions were passed as per the provisions of The Bombay Village Panchayat Act, 1958 (hereinafter referred as 'The Act') and the rules therein by obtaining the consent of owner of the suit property. But, consent of tenants were not obtained. Accordingly, as per his written statement, he done his job by giving necessary advice to the

Grampanchayat at the relevant time of passing said resolutions.

4. Defendant nos.1 and 3 have resisted this suit by filing their written statement at Exh.40. The sum and substance of their written statement can be stated as under,-

The defendants have totally denied the contents of the plaint. It is specifically contended that, though the names of plaintiffs were appearing in the 7/12 extract as a tenant, they have no possession over the suit property. As per their contention the suit property is owned by Smt. Shruti Baswant Naik, Smt. Sushila Balkrishna Khanolkar, Smt. Snehalata Vijay Prabhu & Shri. Prasad Narayan Prabhu and their names were recorded to the 7/12 extract in ownership column. It is specifically denied by the defendants that, the foot-way passes through the suit property is exclusively owned by the plaintiff and other co-sharers. But it is their specific contention that the said foot-way is the public foot-way, which is 14 feet in width and since last 70 to 80 years all villagers are using the said foot-way without the obstruction of the plaintiff. As per their further contention as the owners of the suit property had gave their consent to effect the entry of the said foot-way in the Grampanchayat record as the villagers living in the said locality are in need of it. Accordingly, as per the request of the villagers, in the monthly meeting of Grampanchayat dated 29/01/2009 and 26/02/2009 the necessary resolutions were came to be passed and entry of said foot-way was taken into the record of Grampanchayat in form No.26 by following due procedure of law. The defendants further contended that, the resolutions passed by the Grampanchayat as per the provisions of The Act and so this Court has no jurisdiction to set aside the said resolutions. Accordingly, by denying the possession of the plaintiff over the suit property as well as contending that no cause of action arose for filing this suit and as this Court has no jurisdiction, defendants prayed for dismissal of the suit.

5. Considering the rival pleadings of the parties, my Id. predecessor had framed issues at Exh.14. I have also framed additional issues which are reproduced below. I have heard the argument of both sides. I have also gone through the written arguments filed on behalf of plaintiffs vide Exh.64. After considering the arguments advanced by both sides and going through the entire evidence on record, I have recorded my findings to the said issues, with reasons, thereon are as under:-

ISSUES	FINDINGS
1 Whether plaintiff proves that foot-way in Survey No.38, H.No.11 is personal way of all joint tenants in the said property ?	:- Does not arise.
1A Whether the suit is hit by the provisions of section 180 of The Bombay Village Panchayat Act?	:- Yes.
1B Whether this Court has jurisdiction to try this suit?	:- Does not arise.
2 Whether plaintiff proves that the "Tharav" passed by defendants in their monthly meeting dated 29/01/2009 & 26/02/2009 about said foot-way are illegal and void ?	:- Does not arise.
3 Whether plaintiff is entitled for mandatory injunction as prayed ?	:- Does not arise.
3A Whether the plaintiff is entitled to the relief of declaration, as prayed for ?	:- Does not arise.
4 What order and decree?	:- As per final order.

-: **REASONS** :-

6. In order to prove their suit claim, the original plaintiff namely Mangesh Dattaram Madval examined himself as PW 1 by filing chief-examination affidavit. His evidence is recorded at Eh.15. Later on as defendant nos.1 and 3 filed their written statement and also the original plaintiff, whose chief-examination affidavit is filed at Exh.15 died, the legal heirs of the plaintiffs are brought on record and then plaintiff no.1-A

namely Sachin Mangesh Khanolkar/Madval has filed his chief-examination affidavit at Exh.33. The plaintiffs have also filed the documentary evidence such as 7/12 extract of the suit property (Exh.5), the office copy of notice issued to defendant nos.1 and 3 (Exh.16), the acknowledgement receipt of post office (Exh.17), the death certificate of original plaintiff Mangesh Dattaram Khanolkar (Exh.30). The plaintiffs have filed pursis at Exh.59 and closed their evidence. Defendant no.3 has filed evidence close pursis at Exh.60. Despite giving sufficient time, defendant no.2 has failed to lead his evidence and therefore, the evidence of defendant no.2 is closed vide order below Exh.1.

7. **Admitted facts :-**

Before turning to the evidence on record, I would like to mention here firstly some admitted facts. It is not in dispute that the suit property is owned by Smt. Shruti Baswant Naik, Smt. Sushila Balkrishna Khanolkar, Smt. Snehalata Vijay Prabhu & Shri. Prasad Narayan Prabhu and the plaintiff alongwith the other co-sharers are tenant in it. It is further not in dispute that a foot-way passes through the suit property. Further, it is admitted fact that the defendant-Grampanchayat passed the resolutions dated 29/01/2009 and 26/02/2009 in their monthly meeting and effected the entry of the foot-way to the record of Grampanchayat (Form No.26).

8. On the background of these admitted facts, before going to discuss the evidence led by the parties firstly, it is necessary to see that whether this suit is hit by the provisions of section 180 of The Act as such on the basis of the finding of this issue, the fate of suit will depend. So, firstly here, I have taken this issue no.1-A for consideration and discussion.

9. **As to issue No. 1-A :-**

On this issue the learned advocate for plaintiffs, relying on the

authority of Hon'ble Bombay High Court in the case of Grampanchayat, Kuhi & another Vs. Vijaykumar Radheshyam Bhalotiya, 1986 Mh.L.J. 618 submitted that, it is not necessary to issue a prior notice in the present suit as this suit is filed by the plaintiff for injunction. On the other hand, the learned advocate for defendants opposed this argument and submitted that, in this case the plaintiff is asking the relief of declaration in respect of resolutions passed by the Grampanchayat. So, as per his submission, it is quite necessary to issue prior notice under section 180 of The Act.

10. I gave thoughtful consideration to the submission of both sides. I have also gone through the ratio laid down in the abovesaid authority relied by the plaintiffs. Before going to discuss on this issue, here it is worthwhile to mention the relevant provision of The Act in respect of action against Panchayat and previous notice before institution of the suit, which is incorporated under section 180 of The Act which can read as under,-

*“ **Sec. 180** : (1) No action shall lie against any member, officer, servant or agent of a panchayat acting under its direction, in respect of any thing in good faith done under this Act or any rule or bye-law.
(2) No action shall be brought against any panchayat or any member, officer, servant or agent of such panchayat acting under its direction for anything done or purporting to have done by or under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office of the panchayat and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.
(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.
(4) If any panchayat or person to whom a notice under sub-section (2) is given shall, before an action is brought, tender sufficient amount to the plaintiff and pay into court, the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all cost incurred by the defendant after such tender.”*

11. So, bare perusal of this section 180 of The Act, the opening word of clause (1) is that, no action shall lie against any member, officer, servant or agent of the panchayat. The second clause is also opening with no action shall be brought against any panchayat or any member, officer, servant or agent of said panchayat and also prescribed the mode and time of the notice. Third clause discloses within which period the action will lie from accrual of the cause of action. So, applying this provisions in the case in hand admittedly the plaintiffs have not issued any notice as prescribed under this provision. No doubt, the ratio laid down in the authority relied by the plaintiffs is universally applicable. But, here I would like to mention that this authority is not helpful to the plaintiffs in the given facts and circumstances of the present case, as the facts and circumstances before His Lordship is totally different than the facts and circumstances of the present case in hand. As such, in the case before His Lordship, the original plaintiff has filed a simpliciter suit for permanent injunction against a Grampanchayat in respect of restraining Grampanchayat from leasing out the part of road and in that situation His Lordship held that, it is not necessary for issuance of prior notice under section 180 of The Act by observing that, anything done or purporting to have done used in section 180(2) of The Act that the action contemplated is an action which has taken place unlike the expression “purporting to be done” used in section 80 of The Code of Civil Procedure which is indicative of future actions also. So, in that situation as the act of leasing out a road by the defendant Grampanchayat is held to be a future action and therefore, in that situation His Lordship held that, there is no necessity to issue a prior notice in the suit for permanent injunction. But, in the case in hand, no such situation and also the plaintiffs have not filed this suit for permanent injunction but they have filed this suit for declaration in respect of the resolutions passed by defendant Grampanchayat in their monthly meeting, which admittedly act already done by the Grampanchayat. As such, there is no future action.

So, with due respect, I hold that this authority is not helpful to the plaintiffs.

12. So, taking into consideration all above aspects and clear cut legal provisions of The Act, I hold that in this case before institution of this suit, it is necessary for the plaintiffs to issue the notice as contemplated under the provisions of this section by mentioning cause of action, nature of relief sought, the amount of compensation, the name and place of abode of the person who intends to bring the action etc. as incorporated in clause 2 of section 180 of The Act. As such, for want of issuance of notice as contemplated in section 180 of The Act, the suit is clearly hit by the provisions of section 180 of The Act.

13. Further, here I would also like to mention that, as per the plaintiffs case, Grampanchayat passed two resolutions dated 29/01/2009 and 26/02/2009, which are allegedly passed illegally and unauthorizedly and against these resolutions plaintiffs have filed this suit for declaration that the said two resolutions be declared as illegal, unauthorized, false and not acted upon. So, naturally the cause of action to institute action against Grampanchayat and its members arose on 29/01/2009 and on 26/02/2009. Therefore, in view of clause 3 of section 180 of The Act, it is necessary for the plaintiffs to institute action within a period of six months after the accrual of the cause of action and not afterwards. That means, they have to institute suit within the period of six months from 26/02/2009. But, they have filed this suit on 27/10/2009, which is also the time barred in view of section 180(3) of The Act.

14. Thus, considering all these aspects and discussion in foregoing paragraphs, I come to the conclusion that as the suit is clearly hit by the provisions of section 180 of The Act and also it is time barred as no action

taken by the plaintiffs within six months from the accrual of the cause of action, I hold that this suit is not maintainable and accordingly, I answer this issue.

15. **As to issue nos. 1, 1B, 2 , 3 & 3A:-**

In view of my answer to issue no.1A and as I held that this suit is hit by the provisions of section 180 of The Act and not maintainable, the other aspect regarding evidence led by the plaintiffs to substantiate their case and the discussion as well as appreciation of evidence in that regard is not called for. *Nay it is futile expedition.* Therefore, these issues do not arise for consideration. Accordingly, I answer these issues.

16. **As to issue No.4 :-**

In view of my answer to issue no.1A as the suit is hit by the provisions of section 180 of The Act, in my considered opinion that this suit is liable to be dismissed. It is a general rule that costs to follow the event and I do not want to disturb it. In the result, to answer this issue, I proceed to pass the following order.

:- O R D E R :-

- ❶ The suit is dismissed with costs.
- ❷ Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

Vengurla.
Date : 26-11-2015.

(D. S. Zanvar)
Civil Judge Jr. Dn., Vengurla.