

ORDER BELOW EXHIBIT 14

By way of present application defendants prayed to reject the plaint u/o VII Rule 11 of C.P.C.

02] It is submitted that the plaintiff had challenged the order of Tahsildar by way of present suit in view of provision u/s 143 [4] of Maharashtra Land Revenue Code. In fact, defendants moved application to the Tahsildar, Karanja to grant access to field survey No.62/2 which came to be allowed on 31/07/2014. Thereafter being aggrieved by the order of Tahsildar the plaintiff challenged the order before S.D.O. which came to be rejected on 08/07/2015. Thereafter he had challenged the order of S.D.O. before Additional Collector but his appeal was rejected on 30/03/2016. Thereafter present plaintiff preferred revision against the order of Additional Collector before Divisional Commissioner but again his revision was rejected on 09/05/2017. The order of Divisional Commission was challenged in Writ Petition No.4785/2017 before the Hon'ble High Court of Judicature, Bombay, Bench at Nagpur but it was disposed as plaintiff had sought leave to withdraw petition with liberty to seek appropriate remedy in respect of his grievance in the writ petition before the Civil Court. The said petition is disposed off as withdrawn with liberty as prayed.

03] But the suit is beyond limitation as plaintiff failed to file the suit within limitation as prescribed in sub section 4 of Section 143 of M.L.R. Code. The aggrieved party had to challenge the order of Tahsildar within one year as per provisions. Also as

he obtained to pursue the appellate provision at revenue side he had waived his right to challenge the order before competent Civil Court. It is further submitted that though matter argued before Hon'ble High Court while taking liberty to file suit the plaintiff had not condoned the delay for challenging the order passed by Tahsildar, Karanja in the present suit. With these submissions prayed to allow the application and reject the plaint.

04] The plaintiff resisted application and prayed to reject the same as the suit is within limitation, because firstly Hon'ble High Court had given liberty to approach Civil Court. Thereafter the suit is filed within one month. Furthermore, in view of Section 143 of M.L.R. Code the order of Tahsildar is challenged in Civil Court when it become final in view of withdrawal of Writ Petition after plaintiff exhausted all available modes to him. Sub section 5 of section 143 of M.L.R. Code made clear that if order of Tahsildar is challenged in Civil Court, then it supposed that plaintiff waived the right to appeal before the Revenue Forum but it not in present suit. With these submissions prayed for rejection of application.

05] Having regard to the submissions of both learned Advocates and perused the record.

06] It is settled principle that while considering the application for rejection of plaint the pleading of plaintiff only has to be taken into consideration and not the rebuttal of the defendant. It is fortified by the case law laid down in case of *Kuldeepsingh ..vs.. Bikramsingh* reported in 2017 [6] *Mh.L.J.* 33. Certainly while considering the application no rebuttal document of defendant needs to be considered. The plaintiff had shown the

flow of his appeal since first order till filing of instant suit and even order of Hon'ble High Court. It has some nexus with each other. Therefore, the document and pleading of the plaintiff is taken into consideration only.

07] Already the applicant has narrated the rounds of proceedings against the order of Tahsildar preferred by the plaintiff and lastly suit came to be filed. Therefore, again to narrate the brief history of the matter would be nothing but repetition of facts. Now in view of the rival submissions of both sides, question arisen for my consideration in respect of limitation to file the civil suit against the order of Tahsildar. On perusal of Section 143 of M.L.R. Code it made clear that person being aggrieved by decision of the Tahsildar under this section may within a period of one year from the date of such decision institute a civil suit. On bare perusal it suggests that the aggrieved party has to file suit within one year against the order of Tahsildar. Then question beneath for the consideration is whether appeal preferred against the order would enlarge the limitation.

08] The learned Advocate for plaintiff has submitted that every appeal is continuation of suit is settled position in the eye of law. Therefore, the plaintiff preferred appellate provisions in Revenue Forum therefore, the order of Tahsildar was not final order of relevant proceeding suggest in respect of order of Tahsildar. Certainly there are catena of judgments which suggest that appeal is continuation of suit. Therefore, considering this aspect it can be said that the order of Tahsildar was become final when Divisional Commissioner passed order in revision and

thereafter suit came to be filed.

09] Even this aspect needs to be considered also with the provisions of Maharashtra Revenue Jurisdiction Act, 1876 wherein Section 11 which envisaged, of suit against the order passed according to M.L.R. Code, that suit not to be entertained unless plaintiff has exhausted right of appeal. The provision is in negative manner but if considered in positive aspect it suggest that when plaintiff exhaust appeal prescribed M.L.R. Code thereafter civil suit is maintainable. Certainly it is true that Section envisage that suit against Government but there would be no difference for limitation when suit to be filed against a common man or against officiating post. Thus, this provision can be considered in the manner that suit is maintainable after exhausting the appellate procedure in M.L.R. Code.

10] Lastly, it needs to be taken into consideration that the plaintiff specifically submitted that his writ petition was withdrawn as Hon'ble High Court given liberty to him to approach before the Civil Court. Instant applicant has submitted that mere liberty does not extend the limitation and the plaintiff had not got the delay condoned for filing present suit but on perusal of order in writ petition it suggests that the petition was disposed as withdrawn with liberty as prayed after matter is heard by the Hon'ble High Court. This aspect also supported to my view that the suit of plaintiff is within limitation.

11] The applicant had stressed in his application for rejection of plaint that the suit filed without cause of action. In fact no overt-act took place at the hands of the defendant on

alleged date. The suit is filed without cause of action. The defence counsel retaliate with the submissions that the cause of action arose when the order of Divisional Commissioner passed i.e. on 09/05/2017 and suit filed within one year from the said date even the Hon'ble High Court granted liberty for the same. As earlier in para supra it is mentioned that the appeal is continuation of suit. Therefore, the limitation prescribed in sub section 5 of Section 143 of M.L.R. Code come into play from 09/05/2017. This could be inferred from the order of Hon'ble High Court as liberty was granted to file suit to present plaintiff and therefore, the cause of action constituted on that day to file the suit.

12] Therefore, in view of above discussion I come to the conclusion that suit of plaintiff is within limitation and accordingly application needs to be rejected. Thus, I proceed to pass the following order.

ORDER

- 1] Application is rejected.
- 2] No order as to costs.

Date: 15/02/2018.

Sd/-
[Mukul M. Chitale]
Joint Civil Judge, [J.D.],
Karanja [Lad], Dist. Washim.

CERTIFICATE

I affirm that the contents of this P. D. F. File Judgment/Order are same word to word, as per the original Order.

Name of Stenographer : B. A. Ukey, Stenographer {L.G}.
Court Name : Jt. Civil Judge (JD) & JMFC,
Karanja [Lad], Dist. Washim.
Date : 16/02/2018
Order signed by the Presiding
Officer on : 16/02/2018
Order uploaded on : 17/02/2018