

MHGA010000102018



Presented on : 01-01-2018.
Registered on : 01-01-2018.
Decided on : 28-08-2018.
Duration : 00-Y. 07-M. 27-D.

Exh.No. 11

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GADCHIROLI
(PRESIDED OVER BY S.G.MEHARE)

REGULAR CIVIL APPEAL NO.01/2018

- 1] Rewnath Ramchandra Mashakhtri,
aged about 46 years, Occupation-
Cultivation, R/o Subhash Ward,
Porla, Post. Porla, Tahsil .. **APPELLANT**
and District Gadchiroli. (Orig. Plaintiffs)

-VERSUS-

- 1] Satyawar Tukaram Mamidwar,
aged about 51 years,
Occupation – Cultivation,
R/o Porla, Post Porla,
Tahsil and District Gadchiroli.
- 2] Tahasildar, Tahsil Office,
Gadchiroli, Tahsil and .. **RESPONDENTS**
District Gadchiroli. (Orig. Defendants)

Appearances

Shri P.B. Borawar Advocate for the Appellant.

Shri S.C. Umredkar, Advocate for the Respondent no.1.

Shri S.U. Kumbhare, Advocate for the Respondent no.2.

APPEAL UNDER SECTION 96 OF CIVIL PROCEDURE CODE.

J U D G M E N T

(Delivered on 28th day of August, 2018)

1] The present appeal is preferred by the plaintiff against the judgment and order passed by learned Jt. Civil Judge, Jr.Dn. Gadchiroli in R.C.S. 38/2017, dated 28-11-2017.

2] The parties shall be referred to their original position as in the court of first instance.

3] The facts giving rise to the suit, in brief, were that the plaintiff and defendant no.1 were having boundary dispute over their respective fields. In the dispute raised before the Tahasildar under Section 143 of the Maharashtra Land Revenue Code, the Tahasildar passed an order under Section 143 of the Maharashtra Land Revenue Code on 13-07-2016 against the plaintiff. The plaintiff filed the suit as provided under Section 143 (4) of the Maharashtra Land Revenue Code.

4] The defendant no.1 resisted the suit denying the allegations leveled against him. The defendants have objected the jurisdiction of the Court of Civil Judge, Jr.Dn.

5] The learned court of first instance, framing the preliminary issue under Section 9A of the Civil Procedure Code arrived at the conclusion that the suit is bad for want of notice under Section 80 of Civil Procedure Code since Tahasildar, a public officer is a party to the suit. There is cause of action against Tahasildar (defendant no.2) also. So, the jurisdiction lies with Civil Judge, Sr.Dn. Lastly learned court of first instance pleased to dismiss the suit.

6] Heard learned counsel Shri Borawar for the plaintiff, learned counsel Shri Kumbhare for the defendant no.2 and none present for defendant no.1.

7] The following points arise for the determination of this court and findings thereon are recorded for the reasons to follow:

Sr. No	Points		Findings
1	Is it mandatory to serve the notice under Sec. 80 C.P. Code in the suit as framed by the plaintiff?	..	Negative.
2	Whether the suit can be dismissed as observed by learned court of first instance in the given circumstances?	..	Negative.
3	What order?	..	As per final order.

Reasons

Point No.1 & 2 together:

8] Learned counsel Shri Borawar for the plaintiff vehemently argued that the suit is filed under the remedy available under Section 143 (4) of Maharashtra Land Revenue Code. Therefore, the notice under Section 80 of C.P. Code is absolutely not required. He further argued that learned court of first instance misinterpreted the law and did not pay the heed and wrongly understood the ratio laid down by the Hon'ble Bombay High Court in the case of **Shantabai Bhagwan Patil and others -v- Bhagwan Revanand Patil and others, 2011(1) Mh.L.J. 481**. He also added that basically the suit was presented before the Civil Judge, Sr.Dn.. The Tahasildar was made party to the suit to the knowledge of the court. However, it is administrative mistake of the Senior Division making the suit over Junior Division. For the administrative mistake of the administration of Civil Judge, Sr.Dn. the plaintiff shall not suffer.

9] Learned counsel Shri Kumbhare for the defendant no.2 would submit that once Tahasildar is made a party the provisions of Section 80 C.P. Code automatically come into play. He supported the impugned judgment and order of learned court of first instance.

10] Before embarking upon the legal aspect, the ratio laid down by the Hon'ble Bombay High Court in the case of **Shantabai Bhagwan Patil**, cited supra shall be discussed first.

After having gone through the said judgment, it is crystal clear that once the remedy of filing suit under Section 143(4) of C.P. Code is availed by either of the party against the order passed by the Tahasildar, no appeal as provided under Sub-section (3) of the said section shall be entertained. In simple word, it must be stated that no two remedies can be availed against the order passed under Section 143 at a time. Beside this, the law is settled that if two authorities have jurisdiction the parties has to elect one. Here in the case, there are no facts as such that either of the party have preferred the appeal against the order passed by the Tahasildar dated 13-07-2016.

11] So far as Section 80 of the Civil Procedure Code is concerned, the suit is prevented unless the notice under that section is served upon the public officer or public servant. The words of said section are very clear that the suit shall be against a public servant in respect of any act purporting to be done by such public officer in his official capacity. In simple words, it must be stated that if the party wants to seek any relief against the public officer while discharging the duty in his official capacity, then Section 80 C.P. Code would be attracted. The purport of Section 143 of Land Revenue Code is very clear that it provides the remedy to either of the party to file a suit after the Tahasildar determine the boundary dispute. Whether the Tahasildar in such a suit is a party or not, is a question of investigation. However, prima facie the entire plaint does not reveal that the relief as expected under Section 80 of C.P. Code

is claimed. Undoubtedly the suit filed by the plaintiff is arising out of the order passed by the Tahasildar. It is correct that the said order is the cause of action to file the suit but apparently it is not the cause of action against the Tahasildar i.e. the authority who exercised the powers entrusted to him under a law. Basically the dispute is between plaintiff and defendant no.1 regarding the right of way. The law itself has granted right to the parties to the dispute to get their right determined finally in the Civil Court which the Tahasildar has determined the said issue under Section 143 of Maharashtra Land Revenue Code. In the light of this fact, this court is of the view that there is no cause of action directly or indirectly against the Tahasildar. Therefore, this court come to the conclusion that the observation recorded by learned court of first instance that the notice under Section 80 of C.P. Code is obligatory, appears incorrect.

12] The another issue falls for consideration is whether the plaint can directly be rejected or suit can be dismissed as the learned court of first instance has observed. Para no. 233 of Civil Manual provides that “when a suit assigned for disposal by Civil Judge of the Senior Division to his Joint Civil Judge of the Junior Division is found by the latter to be beyond his pecuniary jurisdiction, he should request his District Judge to transfer the suit administratively to the Civil Judge of the Senior Division, and not return the plaint to the plaintiff for being judicially presented to the proper Court or return it to the Civil Judge of the Senior Division”.

13] Here in the case, there is no issue as regards to the pecuniary jurisdiction of the Civil Judge, Junior Division. The observation recorded by the court of first instance reveals that the suit ought to have been entertained by learned Civil Judge, Senior Division. Order 7 Rule 10 of Civil Procedure Code provides that the plaint shall be returned at any stage of the suit to be presented to the court in which the suit should have been instituted. If the court of first instance was of the opinion that the suit is wrongfully presented before it, it ought to have return the plaint as provided. Here in the case, the facts are again distinct. The suit was basically filed in the court of learned Civil Judge, Senior Division. However, the Civil Judge, Senior Division by its order dated 11-07-2017 i.e. on the day of filing of the suit made over the suit to the court of learned Jt. Civil Judge(Jr.Dn.), Gadchiroli. This appears to be a administrative mistake. Therefore, it would be a great harm to the plaintiff to return the plaint and present it to the appropriate court, when actually has presented. This situation is suited to exercise the powers under Section 24 of the Civil Procedure Code. Therefore, this court is of the opinion that the impugned judgment and order is erroneous and illegal and liable to be set aside. Therefore, the point no.1 and 2 is answered in “negative”.

Point No.3:

14] The discussion made above led this court to arrive at the conclusion that the impugned judgment and order warrants

interference. Therefore, it is set aside. In the light of the facts of the case, the suit is required to be made over to learned court of Civil Judge, Senior Division. Now the court proceed to pass the following order.

ORDER

- 1] The appeal is allowed.
- 2] The impugned judgment and decree passed by learned Jt. Civil Judge, Jr.Dn. Gadchiroli in R.C.S. No. 38/2017, dated 28-11-2017 is hereby set aside.
- 3] The R.C.S.no. 38/2017 pending on the file of Jt. Civil Judge, Jr.Dn. Gadchiroli is made over to the court of learned Civil Judge, Sr.Dn. Gadchiroli for disposal according to law.
- 4] Decree be drawn up accordingly.
- 5] No order as to costs.
- 6] R & P be returned to learned court of Jt. Civil Judge, Jr.Dn. Gadchiroli for compliance as directed above.
- 7] Dictated and delivered in open court.

Sd/-

Gadchiroli.
Date: 28-08-2018

(**S.G. Mehare**)
Principal District Judge,
Gadchiroli.

