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Presented on : 02 / 09 / 2014  
Registered on : 03 / 09 / 2014  
Decided on : 10 / 07 / 2017  
Duration : Y. M. Ds.  
02 10 08

**IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION**  
**AT. TAL. PATHARDI, DIST. AHMEDNAGAR**  
***( Presided over by Dr. D. G. Patwe )***

**REGULAR CIVIL SUIT NO. 414 OF 2014**

**Exh.No. 47**

- 1) **Ashok Eknath Mhaske**  
Age : 35 yrs, Occu : Agriculture
- 2) **Machhindra Eknath Mhaske**  
Age : 37 yrs, Occu : Agriculture  
Both R/o : Savargaon, Tal. Ashti,  
Dist. Beed. ..... **Plaintiff**

**Versus**

**Vitthal Mamataji Mhaske**  
Age : 57 yrs, Occu : Agriculture  
R/o : Savargaon, Tal. Ashti,  
Dist. Beed. ..... **Defendants**

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**SUIT : FOR DECLARATION AND PERPETUAL**  
**INJUNCTION**  
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**Appeared :-** **Advocates :-**  
For Plaintiffs : Adv. Shri. L. I. Shaikh  
For defendant : Adv. Shri. V. D. Velde

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**JUDGMENT ON PRELIMINARY ISSUE**  
(Delivered on 10/07/2017)

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1. In view of application below (Exh.47) moved by defendant preliminary issue as to **“Whether this court has jurisdiction to try and entertain the present suit”** has been framed to be decided as application under section 9-A of Civil Procedure Code 1908.

**Contentions of Defendant in Abbreviate are as under:-**

2. According to defendant plaintiffs have filed present suit for declaration and perpetual injunction. The plaintiffs and defendant have done partition of the suit property as per Section 85 of Maharashtra Land Revenue Code in the year 2014. In between due to the rising prices of suit property the plaintiffs have filed appeal against the order of partition given by Tahasildar to Sub-divisional officer, Pathardi in order to grab the whole suit property by denying the partition. The plaintiffs have filed appeal before sub-divisional officer i.e. RTS NO. 85/2014 and the said appeal is decided by sub-divisional officer on 23-11-2015 by allowing the appeal of plaintiffs. The defendants are aggravated by the said decision of Sub-divisional officer. The defendants have filed appeal before collector, Ahmednagar by filing SAN 716/2015. The said appeal is decided by Collector, Ahmednagar and he has rejected the decision given by sub-divisional officer, Pathardi. The Collector, Ahmednagar has approved the partition carried by order of Tahasildar, Pathardi under Section 85 of MLR Code on 30-07-2016. The plaintiffs have aggravated by the decision of Collector, Ahmednagar and they have filed appeal before Commissioner, Nasik division by filing appeal no. RTSRN 436/2016 and the defendants have received notices and have appeared in it.

3. Defendant has further contended that, the fact of partition carried under Section 85 of MLR code comes within the jurisdiction of revenue

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authorities and therefore this Court has no jurisdiction to try and entertain present suit. The plaintiffs have claimed relief before Commissioner Nasik division and therefore, the plaintiffs have no authority to claim any relief against it in this Court for the same cause of action. The reliefs claimed by plaintiffs through present suit are within the jurisdiction of revenue Court and therefore this Court has no jurisdiction to try and entertain present suit.

4. On the present application of defendant the say of plaintiffs was called. Plaintiffs have submitted their say vide Exh. 48. In their say plaintiffs have stated that, the application by defendant is not legal and therefore not tenable. They have denied the allegations by defendant in toto. They have further stated that, the application given by defendant is only to consume the Court time and in order to delay the present suit. The defendants have taken more than 30 adjournments. The defendants have deliberately not mentioned in their written statement that there was proceedings going before Sub-divisional officer before filing present suit. The defendants have taken lot of adjournments for argument on Exh. 5. The present suit is filed by plaintiffs for declaration and perpetual injunction and the appeal is filed before Commissioner, Nasik for cancellation of mutation entry no. 7951. Therefore, both the facts are different from one another as the reliefs claimed before Commissioner, Nasik are different from reliefs claimed before this Court. The defendants deliberately avoided to mention the proceedings before Sub-divisional officer and later they have amended their written statement.

5. The plaintiffs have further stated that, the application below Exh. 5 in present suit is pending since last 2 and ½ years. The defendants are deliberately consuming time of Court in order to delay the order on application below Exh.5. There is no need to frame preliminary issue about the jurisdiction of present Court as the reliefs claimed before this Court and before

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Commissioner, Nasik are different. Further the plaintiffs have mentioned that, the suit is filed under Specific Relief Act and the claim of defendants about non-maintainability of the present suit before this Court will be decided during the time of hearing of the present suit by framing necessary issue. Therefore, prayed to reject the present application of defendants.

6. Considering the rival submissions at bar and pleadings of both parties, the preliminary issue was framed and it is reproduced as under. I have recorded my findings along with the reasons on it as under :-

<b>Sr. No.</b>	<b>Preliminary Issue</b>	<b>Findings</b>
<b>1</b>	Whether this court has jurisdiction to try and entertain the suit ?	<b>In Affirmative.</b>
<b>2</b>	What order ?	<b>As per final order.</b>

### **REASONS**

7. Both the parties have opted not adduce any other oral or documentary evidence except the documents filed on record by filing pursis vide Exh. 52 and 53.

8. Heard Ld. Advocate Shri.V.D.Velde for defendant and Ld. Advocate Shri L.I.Shaikh for plaintiffs at length.

### **AS TO ISSUE NO.1 :-**

9. The present suit is filed for declaration that the partition executed on 25-07-2014 of suit properties is illegal and therefore not binding on plaintiffs and for grant of perpetual injunction against non alienations or creation of third party interest on suit properties. As per Section 9-A of Code of Civil Procedure and held by Hon'ble Courts in various judgments that if any

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interim application is pending and either party has challenged the jurisdiction of Court then the Court is bound to frame issue of jurisdiction at the first and thereafter to proceed with the suit after taking decision on it. In the present suit in hand the ad-interim application vide Exh. 5 is pending and therefore considering the issue of jurisdiction raised by defendants preliminary issue was framed about the availability of jurisdiction to present Court to try and entertain the suit.

10. As discussed above the suit is filed for declaration that the partition effected between plaintiffs and defendants is illegal and for perpetual injunction. The record reveals and it is admitted by both the parties that, the plaintiff has approached to Sub-divisional officer, Pathardi against the order of partition passed by Tahasildar, Pathardi under Section 85 of MLR Code. It is further admitted by both parties that, the plaintiffs have succeeded in their appeal before sub-divisional officer and the Sub-divisional officer has cancelled the mutation entry no. 7951 of Tahasildar, Pathardi. The defendants have filed appeal against the said decision of Sub-divisional officer before Collector, Ahmednagar and he has cancelled the order passed by Sub-divisional officer, Pathardi. The plaintiffs have gone in appeal against the order passed by Collector, Ahmednagar before Commissioner, Nasik. All the above facts of proceedings going before revenue authorities are admitted by both the parties.

11. The defendant vide present application has challenged jurisdiction of this Court by stating that proceedings are pending before revenue authorities for cancellation of mutation entry no. 7951 and through present suit similar remedy is claimed before this Court. Therefore if both the Courts will proceed with the dispute between plaintiff and defendant, there will be question of law which will arise at the end of decision. The dispute between plaintiffs and

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defendant is of revenue nature and this Court has no jurisdiction to entertain the present suit.

12. On going through the rival pleadings and arguments few things are very much clear that, the plaintiff has claimed declaration that the partition carried between plaintiffs and defendant on 25-07-2014 is false and illegal and for perpetual injunction. Per contra the dispute between plaintiffs and defendant going before the revenue authorities is for cancellation of mutation entry no. 7951. Both the reliefs appear to be different from each other as in the present suit declaration is claimed about the illegality of partition deed carried and before the revenue authorities it is for cancellation of mutation entry. No doubt there is bar to the jurisdiction of Civil Court in regard to cancellation of mutation entry. However, there is no bar to the jurisdiction of Civil Court in order to give decision on alleged illegality in the partition carried between the parties. The parties can definitely challenge the legality or illegality of any partition carried between them before Civil Court. However, they cannot claim the declaration against illegality of mutation entry as it is conferred with the revenue authorities. In present case the plaintiffs have not claimed declaration of illegality about the mutation entry. However they have claimed it against the illegality of partition deed. Therefore, the suit is within the jurisdiction of Civil Court as the reliefs are affecting on the title of suit property which the revenue authorities cannot decide. The declaration claimed by plaintiffs through present suit is of civil nature and therefore the suit is within the jurisdiction of present Court. Further it is settled law that, any action affecting on the title of a property, the parties can file suit in Civil Court and jurisdiction of Civil Court is not barred therein.

13. Ld. Advocate for defendants submitted that, the suit is not maintainable in present Court because the dispute is of revenue nature and the

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plaintiffs have filed parallel proceedings before revenue authorities and before this Court. However, as discussed supra no doubt the plaintiff has carried two parallel proceedings against defendant but the nature of reliefs claimed are different from each other i.e. cancellation of partition deed being illegal and cancellation of mutation entry. Therefore there is no possibility of contrary decision as alleged by defendants even in both the proceedings i.e. before this Court and before the revenue authorities. Considering the nature of reliefs, nature of suit and interest of parties affecting on their title I conclude that, this Court has jurisdiction to try and entertain the present suit. For reasons, I hold **issue no. 1 in affirmative.**

**AS TO ISSUE NO.2 :-**

14. In view of the affirmative finding of issue no.1 it is concluded that, this court has the jurisdiction to try and entertain this suit. Hence, for the aforesaid reason, **I proceed to pass following order in respect of issue no. 2:-**

**ORDER**

- 1) Application under Section 9-A of Civil Procedure Code, is hereby rejected.
- 2) Cost in cause.

Place :- Pathardi.  
Date :- 10/07/2017

**(Dr.D.G.Patwe)**  
Jt.Civil Judge Junior Division,  
Pathardi