

MHAU060003562014



ORDER PASSED BELOW EXH.55 IN R.C.S. No.48/2014

Shivaji & other Vs. Sopan & other

(Delivered on 03.12.2019)

1. Present application is filed by defendants for framing preliminary issue on the ground that, this court have no jurisdiction to try present matter.

2. It is contended by defendants that, present suit is filed by plaintiffs for demolition of the house constructed by the defendants by encroaching upon the government land in Gat No.330, 331 and 15 situated village Rel, Tq. Kannad, Dist.Aurangabad. As per Section 133, 134 and 142 of the revenue department, Civil Court has no power to try this suit.

3. Plaintiffs have filed their say on present application and submitted that, present application is not as per law. It is further contended by plaintiffs that, they have filed present suit for restraining defendants from constructing house on the government road. Since they made out prima-facie case, interim injunction was granted and against which Miscellaneous Civil Appeal was preferred before Hon'ble District Court. However, the defendants completed construction and therefore they have made contempt of court's order. The Section quoted by defendants are not applicable and therefore application is required to be rejected.

4. Heard both parties. Perused record.

5. On perusal of application it appears that, defendants have mentioned some sections, however, have not quoted the law and have only quoted that said sections are from revenue department. Though proper act is not quoted it can be inferred that, the defendants are pointing upon the Section of Maharashtra Land Revenue Code and have contended that, in view of said provisions this court have no jurisdiction to try present matter. They have quoted Section 133, 134 and Section 142 of the Maharashtra Land Revenue Code. Said provisions are relating to the boundaries and boundary marks. They have contended that, in view of these sections present suit cannot be tried.

6. As per Section 20 of Civil Procedure Code the objection to the jurisdiction of the court shall be taken at the earliest opportunity and before the settlement of issues. In present matter defendant Nos.1 to 4 filed their written statement at Exh.19 and after amendment have adopted written statement vide Exh.49. Thereafter, issues were framed at Exh.30 on 07.04.2014 after which plaintiff No.1 filed his evidence affidavit at Exh.50 on 24.10.2018 and present application came to be filed on 17.06.2019. On perusal of written statement at Exh.19, it appears that, no where the defendants have challenged jurisdiction of this court on the ground that, the suit is barred by any law. Admittedly, present application is filed by defendants only after the plaintiffs filed their evidence affidavit which shows that, the objection regarding the bar of jurisdiction is not raised by defendants at earliest possible opportunity or even before framing all issues. On perusal of issues at Exh.30 it appears that, the issue regarding maintainability of present suit is also framed. Therefore, it can be gathered that, defendants have not raised present issue bonafidely.

7. Present matter is filed by plaintiff for mandatory injunction thereby seeking demolition of the construction of the house made by

defendants on the government road in the suit property. Considering the nature of suit it cannot be said that, there is a bar to this court from trying present suit. The section quoted by the defendants are regarding the boundaries. Whereas considering the pleading of plaintiffs their appears no dispute regarding the boundaries. On the contrary, the plaintiff is coming with specific boundaries and claiming injunction against the defendants. Therefore, it cannot be said that, there is any express or implied bar to this court from trying present suit. Therefore, in such circumstances, there are no merits in present application and is required to be rejected.

8. The learned advocate for the defendants have relied upon judgment on Hon'ble Bombay High Court in *Pandurang Chandrabhan Bauche Vs. Jalindar Sarandhar Tupe decided on 24.07.2008 and Shantabal w/o Bhagwan Patil & others Vs. Bhagwan s/o Revanand Patil & others decided on 09.02.2010.* On perusal of these both authorities it appears that, they are relating to Section 143 of Maharashtra Land Revenue Code and no where it is held that, there is any bar to the jurisdiction of the Court as per Sections quoted by the defendants. Hence, these authorities are not helpful to the defendant's case. Therefore, in view of all above discussion I pass following order;

ORDER

Application Exh.55 is hereby rejected.

Date : 03-12-2019.

(Pankaj K. Ahir)
Civil Judge, Jr.Divn., Kannad.
Dist. Aurangabad

CERTIFICATE

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

Name of the Stenographer : A.V. Chopade,
Court : C.J.J.D., Kannad.
Date : 03.12.2019,
Order signed by the
presiding officer on : 07.12.2019,
Order uploaded on : 07.12.2019.

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