

MHAU060003562014



ORDER PASSED BELOW EXH.56 IN R.C.S. No.48/2014

Shivaji & others Vs. Sopan & other

(Delivered on 03.12.2019)

1. Present application is filed by defendants for closing present matter on the ground that, suit of public nuisance cannot be contested by sole plaintiff. It is contended by the defendants that, since plaintiff No.3 has expired and plaintiff No.2 has withdrawn the suit, present suit cannot be tried as per Section 9 and 91 of the Code of Civil Procedure. Also the suit is regarding the government road therefore, as per Maharashtra Land Revenue Code suit cannot be proceeded further and hence present proceeding be closed.

2. Plaintiffs submitted their say and contended that, present application is pre-mature as the pursis of plaintiff No.2 is not accepted. The plaintiff has only filed suit for injunction and not a representative suit and Section 91 and 9 of Code of Civil Procedure is not applicable. The suit is not regarding public nuisance, hence, application be rejected.

3. Heard both parties. Perused record.

4. The present application is filed by the defendants on the ground that, since only plaintiff No.1 has remained present suit cannot be proceeded further. From the perusal of Exh.1, it does not appear that, plaintiff No.3 has expired, no such intimation is filed on record by any of the parties. In view of provisions of Order 23 Sub Rule 1(5) of Code of

Civil Procedure, 1908, the withdrawal pursis of plaintiff No.2 at Exh.57 is not accepted by this court. Therefore, the grounds raised by the defendants are baseless.

5. On perusal of plaint it nowhere appears that, present suit is filed by plaintiff as per Section 91 of Code of Civil Procedure, 1908. Therefore, there is nothing on record to suggest that present suit is filed as per Section 91. Regarding the objection of defendants all the bar of the present suit as per the provisions of Maharashtra Land Revenue Code, the detail order below Exh.55 is passed and said objections of defendants are rejected. Therefore, in view of all these circumstances present application is devoid of any merits and hence is hereby rejected. Hence, following order is passed;

ORDER

Application Exh.56 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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