

MHAU060004142014



ORDER PASSED BELOW EXH.47 IN R.C.S. No.58/2014

Shilabai & 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 has no jurisdiction to try present matter.
2. It is contended by the defendants that, present suit is filed by plaintiffs for permanent injunction thereby restraining defendants from constructing house, causing obstruction or creating new road on the *Bandh* of *Gat* No.85 and 334 situated at village Rel, Tq.Kannd, Dist.Aurangabad. It is further contended that, with regards to said reliefs plaintiffs are required to ask reliefs as per Section 133, 134, 137, 142 of revenue department and this Court has no jurisdiction for the same. Hence, they prayed that preliminary issue be framed regarding whether this court has jurisdiction to try present matter.
3. Plaintiffs filed their say and submitted that, present matter is pending for the cross-examination of the plaintiffs. The defendants have filed written statement, however, have not made any such contention. Only for prolonging the matter present application is filed. Hence, it 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 has no jurisdiction to try present matter. They have quoted Section 133, 134, 137 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, 1908 the objection to the jurisdiction of the court shall be taken at the earliest opportunity and before the settlement of issues. In present matter it appears that, the defendant Nos.1 to 7 have filed written statement at Exh.17 on 07.04.2014 and defendant Nos.5 and 6 have filed written statement at Exh.25, thereafter, they have also filed Additional written statement at Exh.34 on 02.11.2017. Issues were framed on 02.11.2017 at Exh.35 and plaintiff No.1 filed her affidavit at Exh.39 on 26.06.2018. Thereafter, present application came to be filed on 24.10.2018.

7] On perusal of written statement at Exh.17, 25 and 34, 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.35 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.

8. Moreover, the plaintiffs have filed present suit thereby claiming permanent injunction against the defendants for restraining them from making any obstruction. 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. Hence, follow order is passed ;

ORDER

Application Exh.47 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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