

Order below Exh. 24 in Reg. Civil Suit No. 354/2017

This is an application filed by defendant Nos. 1 to 3 under Section 9-A of the Code of Civil Procedure 1908 for framing of preliminary issue.

02. It is contended that, the present suit is filed for partition, declaration and for perpetual and mandatory injunction. It is further contended that, defendant Nos. 15 & 16 are Grampanchayat constituted under Village Panchayat Act. According to defendant pre-suit notice as prescribed under Section 180 of the Bombay Village Panchayat Act 1958 was not given to defendant Nos. 15 & 16. Therefore, the suit is not maintainable for want of notice under Section 180 of the Village Panchayat Act. Hence, defendant Nos. 1 to 3 prayed for framing of preliminary issue about jurisdiction.

03. On the contrary plaintiff has objected said application and opposed for framing preliminary issue. It is submitted that, plaintiff is not seeking any relief against defendant Nos. 15 & 16. According to plaintiff he has seeking relief against defendant Nos. 1 to 3 for removal of un-authorised construction which was erected on suit property. It is further submitted that, defendant Nos. 1 to 3 have no locus standi to raise objection as to jurisdiction. According to plaintiff, the defendant only to prolong hearing of injunction application filed present application. Hence, he prayed for rejection of application.

04. I have heard the Ld. advocates for the both the parties at length. The Ld. Advocate for plaintiff relied upon **Chandrakant Deshmukh V/s. State of Maharashtra**, wherein Hon'ble Bombay High

Court (Nagpur Bench) pleased to held that, pre-suit notice is required when plaintiff has to seek any relief against government. The object enacting Section 80 is to give an opportunity to the government or a public officer to consider for itself or himself whether it or he would grant the relief claimed to the plaintiff or contest the suit.

He further relied upon **Grampanchayat Zadashi V/s. Sunil Chalak** second appeal No. 251/2004, wherein Hon'ble Bombay High Court pleased to held that, if act of Grampanchayat was not purportedly done in good faith under the provisions of Village Panchayat Act. In this circumstances it was not incumbent upon the plaintiff to have issued notice under Section 180 of the Village Panchayat Act before initiating action. Even otherwise the Trial Court did not frame any issue with regard to requirement of such notice.

05. After going through the record, it appears that, the present suit is filed for partition, declaration and for perpetual and mandatory injunction. It is a contentions of plaintiff that, he is having share in suit property. According to him the said share is yet to be partitioned, despite of that, defendant Nos. 1 to 3 are erecting construction on suit property. Therefore, he seek mandatory and perpetual injunction against defendant Nos. 1 to 3. The plaintiff has made defendant Nos. 15 and 16 as a party to suit, who are suppose to be the officers of grampanchayat. However, after going through the averments made in the plaint and relief sought by plaintiff it shows that, the plaintiff has not seeking any relief against defendant Nos. 15 and 16, he has made formal parties to them. However, defendant raised objection as to that, the plaintiff has not issued pre-suit notice as required under Section 180 of the Maharashtra Village Panchayat Act 1958. Therefore, defendant Nos. 1 to 3 prayed for framing of preliminary issue about jurisdiction.

06. As discuss above the purpose of pre-suit notice contemplated under Section 180 of the said Act is to offer an opportunity to concern Grampanchayat or officer concern to consider for itself or himself, whether it or he would grant the relief claimed to the plaintiff or contest the suit. However, in present case plaintiff has not seeking any relief against defendant Nos. 15 and 16, they are only formal parties to the suit. Therefore, the pre-suit notice contemplated under Section 180 is not required to issue to the defendant Grampanchayat. Hence, I found it appropriate there is no necessity to frame preliminary issue as to jurisdiction. Thus, application is devoid of merits and it is liable to be rejected. Hence, I proceed to pass the following order.

ORDER

1. Application (Exhibit 24) is rejected.
2. No order as to cost.

Date: 03/01/2018.
Ichalkaranji.

Sd/-
(P. M. Mane)
7th Jt. Civil Judge Junior Division,
Ichalkaranji.

I affirm that the contents of this PD.F file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Patil (L.G.)
Name of Court	P. M. Mane, 7 th Jt. Civil Judge Jr. Dvn. & Judicial Magistrate F. C., Ichalkaranji.
Date of Dictation	03/01/2018
Judgment signed by P.O. on	03/01/2018
Judgment uploaded on	03/01/2018