

MHKO070002982021



ORDER PASSED BELOW EXH. 19

1] This application is filed by defendant No.1 under Order 7 Rule 11 of Code of Civil Procedure seeking rejection of plaint. According to defendant No.1 suit is for declaration and mandatory injunction. Plaintiff has challenged the mutation entry No. 1221 taken by City Survey Office, Shirol and for that purpose City Survey Officer, Aalas is made as defendant No. 2 in present suit by the plaintiff. According to defendant No.1 mutation entered by revenue authority can not be challenged before this court. There is express bar as per section 158 of Maharashtra Land Revenue Code, 1966. Thus, plaint is liable to be rejected.

2] According to defendant No.1, no prior notice as provided by Section 80 of Code of Civil Procedure was issued by plaintiff, the claim against revenue authority was not in urgent nature. Also on these grounds, suit is not maintainable.

3] Plaintiff by way of Exh. 25 filed say and opposed the application of defendant No.1. According to plaintiff,

application is not maintainable in accordance with law. Suit is for declaration and mandatory injunction. Notice u/s. 80 of Code of Civil Procedure was waived by taking permission of court. Defendant No. 1 has misinterpreted the provisions of section 158 of Maharashtra Land Revenue Code and filed present application. Plaintiff has not challenged the mutation entry passed by revenue authority before this court. On all above grounds, application taken out by defendant No.1 sought to be rejected.

4] Heard both sides and gone through the record. Considering rival contentions of both parties, following points arise for my determination and I have recorded my findings thereon alongwith detailed reasons to follow.

Sr. No.	Points	Findings
1.	Whether plaint is required to be rejected as prayed by defendant No.1 ?	... In the negative.
2.	What order?	As per final order.

REASONS

5] It is matter of record that, defendant No.1 has not specifically mentioned in his application that under which sub rule of Rule 11 of Order 7 of the Code of Civil Procedure, plaint is required to be rejected. Needless to mention here

that, while deciding the application under Order 7 Rule 11, court has to see only contents of the plaint. This court can not consider the defence taken out by defendant No.1 while deciding the present application.

6] On perusal of defendant No.1's application it appears that, he is seeking rejection of plaint on the ground that, the jurisdiction of this court to try and entertain present suit is expressly barred by provisions of Section 158 of Maharashtra Land Revenue Code. As per provisions of Order 7 Rule 11(d), plaint can be rejected, where the suit appears from the statement in plaint to be barred by any law.

7] According to defendant No.1 present suit is in respect of challenging the validity of mutation entry No. 1221 taken out by revenue authorities. As per Sec. 158 of Maharashtra Land Revenue Code 1966,, no suit shall be entertain against the State Government or any officer of the State Government in respect of claim to have the entry made in any record or register i.e. maintain under that chapter or to have any entry omitted or amended. Plaintiff is seeking mandatory orders against the revenue authority. Plaintiffs claim is in respect of mutation entered by revenue authority and therefore, plaint is required to be rejected.

8] Suit property 'A' was owned by father of plaintiff

and defendant No.1. Their father died on 23/4/2017. Plaintiff is owner and possession of suit property 'B' since prior to 2016. Plaintiff pays water and electricity charges regarding it. According to plaintiff suit property 'A' is joint family property. It is yet not partitioned. Plaintiff is having his share in it. Defendant No.1 is trying to dispossess plaintiff from both suit property 'A' and 'B' without following due process of law on the basis of illegally entered mutation entry No.1221 to city survey record of Aalas.

9] According to plaintiff, he was unaware about mutation entry No. 1221. Only after detail inquiry with concern office, he came to know that, revenue authority, defendant No.2 has taken such entry on the basis of alleged Hibbanama dtd. 13/9/2016. According to plaintiff, entry on the basis of alleged Hibbanama dtd. 13/9/2016 is illegal. According to plaintiff, no such Hibbanama was ever executed and possession of suit property was handed over to defendant No.1. Alleged Hibbanama dtd. 13/9/2016 on the basis of which mutation entry 1221 is taken by defendant No.2, is not in accordance with provisions of Muslim law. Thus, it is illegal. Hence, plaintiff has sought declaration that, alleged Hibbanama be declared as illegal and not binding on plaintiff to the extent of plaintiffs joint share in the suit property 'A' and directions are sought against revenue authority to delete the names of defendant from ownership column of suit

property 'A' entered on the basis of Hibbanama dtd. 13/9/2016.

10] In addition to this plaintiff has sought perpetual injunction restraining defendant from obstructing his peaceful possession over suit property 'B'. The said house is constructed by plaintiff, he is in possession of it hence, revenue authority be directed to delete name of defendant as owner and possessor of said property.

11] Thus, recitals of plaint as whole shows that, plaintiff is seeking declaration of his civil right i.e. right of ownership on the basis of Hibbanama. Whether such Hibbanama was executed by his deceased father in favour of plaintiff, and on that basis he become sole owner and is in possession of entire property can be decided by this Civil Court only. Thus, the main relief of declaration and perpetual injunction on the basis of it, is triable by this court alone and not the revenue authority. The relief sought from the revenue authority are consequential reliefs. Only after deciding entitlement of plaintiff about main relief, question of granting consequential relief will arise before this court, So plaint can not be rejected as sought by defendant No.1. There is no any provision to reject plaint in part. Entitlement of consequential reliefs can only be decided after fulfilled trial, after deciding entitlement of main reliefs

(Exh.19)

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12] Hence for all above reasons, I answer point No.1 in negative and in order to answer point No.2, I proceed to pass following order.

ORDER

- (1) Application stands rejected.
- (2) No order as to costs.

Dt. 16/12/2021.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.