

MHKO070002982021



ORDER PASSED BELOW EXH. 20

1] Defendant No.1 has taken out present application for dismissal of suit on the ground that the jurisdiction of this court is expressly barred in view of section 158 of Maharashtra Land Revenue Code, 1966. In order to decide the suit of plaintiff and therefore suit be dismissed as per provisions of Section 9 of Code of Civil Procedure.

2] According to defendant No.1 plaintiff has challenged mutation entry No. 1221 entered by City Survey Officer, Aalas and for that purpose he has added defendant No.2 i.e. City Survey Officer as defendant No.2, who is a government servant, He is appointed by State government. Therefore, no relief can be claimed against defendant No.2 and therefore, suit is not maintainable before this court.

3] According to defendant No. 1, court is not having jurisdiction to decide validity of mutation entered by revenue authorities in view of provisions of Section 158 of Maharashtra Land Revenue Code 1966. On all above ground

suit be dismissed as does not within jurisdiction.

4] Plaintiff by way of detail reply vide Exh.24 opposed the application taken out by defendant No.1. According to plaintiff, application is not maintainable in accordance with law and therefore, liable to be rejected. Suit is for declaration, ownership and on the basis of it mandatory injunction is sought by plaintiff. Plaintiff is not challenged the mutation entry taken by revenue authority. Defendant No.1 is mislead this court and wrongly interpreting provisions of Section 158 of Maharashtra Land Revenue Code, 1966. On all these grounds application taken out by defendant No.1 is sought to be rejected.

5] 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 this court is having jurisdiction to try and entertain the suit ?	... In the Affirmative.
2.	What order?	As per final order.

R E A S O N S

6] Prior to proceeding further it is necessary to mention here that, as per Section 9 of the Code of Civil Procedure, the court has jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. According to defendant No.1 plaintiff has challenged the validity of mutation entry No. 1221, therefore the suit is expressly barred as per provisions of Section 158 of Maharashtra Land Revenue Code, 1966 and therefore it be dismissed.

7] On perusal of plaint as whole, it reveals that, plaintiff is seeking declaration that Hibbanama dtd. 13/9/2016 as illegal. Such claim of declaration about validity of Hibbanama can only be decided by this court alone and not the revenue authority. The main/substantive claim about validity of Hibbanama being of civil nature has to be decided by this court only. However, grant of mandatory injunction against revenue authority is consequential relief and is solely depend upon plaintiff's entitlement of substantial relief of declaration.

8] Moreover plaintiffs first or substantial claim about perpetual injunction on the basis of settled possession

(Exh.20)

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of suit property 'B', can be tried and decided by this civil court and not the revenue authority.

9] For all above reason, I am of the view that, plaintiffs suit is not entirely barred by provisions of Section 158 of Maharashtra Land Revenue Code 1966. His main or substantive claim can be tried and decided by this court alone. His entitlement for consequential relief can be decided only during trial. For all above reasons suit can not be dismissed as prayed. Hence, I recorded my findings to point No.1 in affirmative 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.