

MHKO090000852020



ORDER BELOW EXH. 48 IN REG. CIVIL SUIT NO. 37/2020

1. Perused application Exh. 48 and say filed below Exh. 50. Heard arguments of Ld. Adv. Shri. Chothe and Shri. R. R. Chavan.

2. Three material contentions are raised in the application for rejection of plaint -

- (i) That, frivolous suit is filed against defendant Nos. 2, 5 and 6, when they are in fact having no nexus with the suit property. They are unnecessarily put to hardship by filing such suit,
- (ii) The plaintiffs have filed the suit in the representative capacity, but there is no compliance, of order I Rule 8 of the Code of Civil Procedure, and lastly
- (iii) No prior notice is served to the defendants, when they are public bodies.

On the basis of these three contentions, the defendants are claiming that the plaint is liable to be rejected.

3. On the other hand, the plaintiffs contend that these are not the grounds, on which the plaint can be rejected, neither these grounds can be considered as legal bar so that plaint can be rejected on its basis. In this regard, reliance is placed on three rulings, *Hubli Panjarapole & other Vs. Saraswatevva Bayappa*

Kala Ghatki, AIR 1953 Bom. 334, Yusuf Ajj Shaikh Vs. Special Land Acquisition Officer & others, AIR 1994 Bom 327 and Shri. Mohamed Ibrahim Khan Vs. Shri. Gajanan Rama Parab Gaonkar, AIR 2005 Bom. 179.

4. I carefully perused these three rulings. In the ruling of *Yusuf* (supra), it is observed that suit can be considered as representative suit, only when the permission to that effect is granted by the court. Merely because of some pleadings in the plaint in this connection, nature of the suit cannot be changed and it will not become a representative suit.

5. Regarding first objection raised by the defendants, I find that at this stage of the matter, it cannot be decided, whether defendant Nos. 2, 5 and 6 are impleaded in the suit unnecessarily. Their nexus can be understood only when oral evidence is adduced by both the sides. Hence, before any evidence is commenced, no opinion can be formed regarding impleadment of defendant Nos. 2, 5 and 6, neither it can be said that they are unnecessarily impleaded.

6. With regard to second objection, I find substance in submission of Ld. Adv. Shri. Chavan. It is not contended by the plaintiff that it is a representative suit. No permission is sought under Order I Rule 8 of the Code of Civil Procedure. Therefore, the defendants cannot say that it is a representative suit and as it is so, it is bad for want of seeking permission. Therefore, this contention is totally unacceptable. Similarly, last contention of the plaintiff is also not having any merit. The mandate of issuing notice and its consequences cannot be decided at the stage of

Order VII Rule 11 of the Code of Civil Procedure. It is a mixed question. Therefore, the contention raised by the defendants are not acceptable. There is also no specific pleading that which legal bar can be attracted here. Order VII Rule 11 of the Code of Civil Procedure provides six grounds, on which the plaint can be rejected. The same are as follows -

11. Rejection of plaint – The plaintiff shall be rejected in the following cases -

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of Rule 9.*

7. One of it is a bar of law. The defendants have failed to show any such bar. Even if it is assumed that there are certain defects in the pleadings. These defects cannot be decided at this stage. The plaintiff can give explanation about these defects in his evidence. Therefore, on such defects, the plaint cannot be rejected. Hence, I pass the following order -

ORDER

1. The application Exh. 48 is rejected.
2. No order as to costs.

Date – 19.12.2022

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj