



Order below Exh. 15 in R.C.S.No. 21/2020

This is an application made by the defendants under Order 7 Rule 11 (a), (b) and (d) of the Code of Civil Procedure for rejection of plaint. It is contended that the suit is instituted for perpetual injunction under Section 38 of the Specific Relief Act. However, cause of action does not disclose in body of plaint. Also in paragraph No.11 of the plaint, the plaintiff has sought two distinct reliefs but the suit is not valued accordingly. As such, the suit is undervalued. Further, it appears from the statement in the plaint that present suit is barred by provisions of section 41(h) of the Specific Relief Act. The plaintiff has other equal efficacious remedy but not availed. Likewise, the plaintiff has not served notice on the defendants prior to institution of suit as contemplated under section 180 of the Maharashtra Village Panchayats Act. Therefore, suit is hit by the said provision. Considering all these aspects, present plaint is liable to be rejected with costs under Order 7 Rule 11 (a), (b) and (d) of the Code of Civil Procedure.

02. The plaintiff by filing his say at Exh. 16, resisted contention of the defendants. The plaintiff averred that he has specifically mentioned the cause of action in paragraph No.5 of the plaint which arose for institution of suit. The suit is instituted for relief of perpetual injunction only and relief claimed by him is

properly valued. Further, the plaintiff has sought only relief of perpetual injunction. Therefore, issuance of previous notice as contemplated under section 180 of the Maharashtra Village Panchayats Act is not necessary. Also from statement in the plaint itself, it can be gathered that no equally efficacious relief can be obtained by the plaintiff by any other usual mode of proceeding. Hence, the suit is not barred by the provisions of section 41(h) of the Specific Relief Act. The defendants have made present application only to protract the matter. On these grounds, the plaintiff urged to reject the application with costs.

03. Heard both sides. The defendants sought rejection of plaint firstly under Order 7 Rule 11(a) of the Code which provides that the plaint shall be rejected where it does not disclose a cause of action. In this regard on perusal of plaint, it appears that the plaintiff in paragraph No.5 of the plaint has specifically mentioned the dates of notices viz. 25-04-2020, 02-05-2020 and 06-05-2020 issued by the defendants to him for stopping his construction. Thus, cause of action certainly accrued to the plaintiff as mentioned in the plaint. Hence, he constrained to approach the Court by way of present suit.

04. The another contention of the defendants that the plaintiff has made two distinct prayers but the suit is not valued accordingly. As the suit is undervalued, the plaint shall be rejected under Order 7 Rule 11(b) of the Code. In this context on perusal of relief clause in the plaint, the plaintiff has sought relief of permanent injunction restraining the defendants from causing obstruction to his peaceful possession and from demolishing or

causing damage to his construction. Thus, the main relief sought by the plaintiff is permanent injunction restraining the defendants from causing obstruction to his possession and another ancillary relief that not to demolish or cause damage to his property. The second relief is mere ancillary to main relief. Therefore, the plaintiff has made valuation at Rs.1000/- of relief claimed and paid proper Court fees on it. Thus, it transpires that relief claimed by the plaintiff in the suit, is properly valued and he paid necessary Court fees thereon.

05. Further, the defendants raised objection that the suit appears from the statement in the plaint to be barred by provisions of section 41(h) of the Specific Relief Act. Likewise, the plaintiff has not given previous notice in writing to the defendants under section 180 of the Maharashtra Village Panchayats Act. In this context again on perusal of plaint, no statement therein appears that the plaintiff has equally efficacious relief and therefore he can certainly be obtained it by any other usual mode of proceeding. Therefore, it cannot be said that suit is barred by provisions of section 41(h) of the Specific Relief Act. Similarly, the relief claimed in the present suit is of permanent injunction in regard to future actions which are apprehended by the plaintiff. The future action challenged by the plaintiff is not coming within the perview of section 180 of the Maharashtra Village Panchayats Act relating to previous notice. Therefore, in present suit, previous notice under said provision is not necessary as alleged by the defendants.

06. Cumulative effect of above discussion is that present application is devoid of merit. Hence, following order :

ORDER

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

Kale-Kheriwade.
Date : 29/10/2020.

(V. V. Khulape)
Civil judge Junior Division,
Kale-Kheriwade.