

RCS No.73/2023
Yadavrao -VS- Manohar

ORDER BELOW EXH.17
(Passed on 31/07/2023)

Defendant No.1 has filed the present application for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code,1908 (For brevity hereinafter referred as “the Code”).

02] Defendant No.1 submitted that, plaintiffs have prayed for declaration that, the fund issued by defendant No.2 in the name of defendant No.1 under the Pradhanmantri Aawas Yojana is per se illegal. Defendant No.2 is the Government officer and as per Section 180 of the Maharashtra Village Panchayat Act, 1958 read with Section 80 of the Code, no suit shall be filed against defendant No.2 prior to 60 days after issuance of notice. However, plaintiffs have issued notice under Section 80 of the Code on 12/07/2023, which was received by defendant No.2 on 17/07/2023 and cause of action arose from 17/09/2023. However, plaintiffs have filed the present suit on 21/07/2023 which is premature.

03] Defendant No.1, further submitted that, plaintiffs have challenged an action of the Gram-panchayat, therefore, they have efficacious remedy to challenge an act of defendant No.2 before the Revenue Commissioner, Nagpur and this court has no jurisdiction

to try and entertain this kind of prayer. As per Section 41(h) of the Specific Relief Act, equally efficacious relief can be obtained by another mode except in case of breach of trust. In the present case equal remedy is available to plaintiffs.

04] Defendant No.1 further submitted that, plaintiffs are asking three reliefs, in which relief No.1 is in respect of declaration against defendant No.2, therefore, plaintiffs are bound to pay court-fees on declaration which is valued at Rs.1,000/-. Further, relief No.2 is concerned, plaintiffs prayed for relief of injunction and removal of an encroachment, which is also valued of Rs.2,000/-. Lastly, relief No.3 is concerned, plaintiffs are seeking damages of Rs.500/- per day for mental harassment and the plaintiffs bound to pay Court-fees over the amount of damages. However, plaintiffs calculated court-fees worth Rs.1,000/- and paid Rs.200/- Court-fees. On these grounds defendant No.1 has filed the present application.

05] Plaintiffs have filed reply at Exh.18. Wherein they submitted that, they have made defendant No.2 as a party in the present suit and there is no requirement of prior notice, when the suit is filed for the future injunction. If the injunction asked against future act then there is no requirement of notice. In the present case plaintiffs claimed declaration that, defendant No.2

issued funds for construction of defendant No.1, which is not sanctioned by the Competent Authority, hence, notice is not mandatory. Plaintiffs did not claim relief against an act done by the officer of the Gram-panchayat. Section 41(h) of the Specific Relief Act is not applicable to the present case, because plaintiffs claimed restriction on easementary way and this Court has jurisdiction to grant such relief. As per Section 6(iv)(j) of the Maharashtra Court Fees Act, the suit filed for declaration with or without injunction the valuation would be Rs.1,000/- and plaintiffs pay proper Court-Fees. On these ground plaintiffs prayed for rejection of plaint.

06] Perused the application, say and record. Heard.

07] It is well settled law that, while in order to decide application under Order 7 Rule 11 of the Code only averments of the plaint is required to be seen and not else. Plaintiffs have filed the present suit for declaration as well as for permanent and mandatory injunction in respect of City Survey No.160, area 66.68 sq. meter, situated at village Gada, Tah. Kamptee, District Nagpur. (Hereinafter referred as “the suit property”). Plaintiffs are the lease holder of the suit property. Originally house No.160, 159, 161(Old No.49) were in the name of father of plaintiffs No.1 by name Kacharu Dudhukey and after his death the name of

plaintiffs No.1 and his brothers mutated in record of rights. On 11/09/2017 plaintiff No.1 and his brothers executed mutual partition amongst them and get separated their share. The said partition deed was witnessed by defendant No.1, and after said mutual partition, house No.49 divided amongst three brothers of plaintiffs No.1 and numbered as 49/1, 49/2 and 49/3. There is 6 feet lane in between house of plaintiffs and defendant No.1, and said lane was and is used by plaintiffs and people in locality for ingress and egress. This lane was used by plaintiffs and the people of locality since last 40 years. In the month of December 2022 plaintiffs learnt that, defendant No.2 allotted the fund to construct the house to defendant No.1 under the scheme of 'Pradhanmantri Aawas Yojana'. Hence, plaintiffs raised an objection to defendant No.2 to restrain the construction. However, defendant No.2 without making inquiry allotted the fund to defendant No.1, which is per se illegal. Defendant No.1 started construction over the lane. Plaintiffs stopped defendant No.1 from carrying out construction in lane, but defendant No.1 started quarreling with plaintiffs. Therefore, plaintiffs lodged complaint with the New Kamptee police station and on the basis of complaint Non-cognizable offence came to registered. Defendant No.1 again started construction on 26/05/2023, at that time plaintiffs lodged complaint with Sabhapati, Panchayat Samiti, Kamptee, defendant No.2 and the Block Development Officer, of

the Panchayat Samiti, Kamptee. On issuance payment from defendant No.2 and the office of Block Development Officer, Panchayat Samittee Kamptee, defendant No.1 misused that money and started construction in between lane. The construction work of defendant No.1 was not sanctioned by the Competent Authority and even though defendant No.2 and the office of Block Development Officer disbursed payment for construction. Defendant No.2 and the office of Block Development Officer without completing inquiry allotted fund to defendant No.1 for illegal construction. Despite complaint no action was taken by defendant No.2 and the office of Block Development Officer. Defendant No.2 and the office of Block Development Officer committed misappropriation of the Government funds by giving it to the wrong person. Hence, the suit.

08] Now coming to the objection raised by the defendant No.1 in the light of plaintiff's pleading. The first objection raised by defendant No.1 that, defendant No.2 is a Secretary of Gram-Panchayat, Gada and he is the Government Officer, therefore, the suit is premature and plaintiffs have filed the present suit before statutory period as contemplated under Section 80 of the Code. In continuation with this objection the another objection raised by defendant No.1 that, as per Section 41(h) of the Specific Relief Act, equal efficacious remedy is available to plaintiffs to challenge

an act of defendant No.2 before the Tahsildar, the Sub-Divisional Officer, the Collector or the Revenue Commissioner who are dealing with the same, as plaintiffs are asking relief of declaration that, fund issued by defendant No.2 to defendant No.1 under the 'Pradhanmantri Aawas Yojana' is per se illegal.

09] No doubt, it is mandatory that, until the expiration of two months next after notice in writing the plaintiff cannot filed suit when there is relief claimed against the Government or against the public officer in respect of any act purporting to be done by such public officer in his official capacity as contemplated under Section 80 of the Code. On perusal of averments of plaint in its entirety, there is no any relief sought against defendant No.2 being public officer or against the Government. No doubt, in paragraph No.8 of the plaint, it has pleaded that, defendant No.2 and the office of Block Development Officer committed misappropriation of the Government fund by giving it to the wrong person, but based on this pleading plaintiffs did not seek relief directly against defendant No.2 or the Government. Therefore, question of issuance of notice as contemplated under Section 80 of the Code does not arise.

10] Further, so far as Section 41(h) of the Specific Relief Act, 1963 is concerned, the base on plaintiffs suit is that,

defendant No.1 committed an encroachment in between lane of their house and the house of defendant No.1 and based on this, plaintiffs are seeking relief of declaration, permanent and mandatory injunction. Thus, this court has jurisdiction to entertain and decide the present suit.

11] The another objection raised by defendant No.1 that, the relief claimed is under valued, as relief No.i is concerned, plaintiffs are claiming declaration against defendant No.2 and therefore they are bound to pay court-fees on valuation of Rs.1,000/-, relief No. ii is concerned, plaintiffs should valued Rs.2,000/- and relief No. iii is concerned, plaintiffs are bound to pay the court-fees over the damages amount. For ready reference here I reproduce prayer clause -

i] that, plaintiffs claim a decree for declaration to the effect fund issued by defendant No.2 to defendant No.1 under Pradhanmantri Aawas Yojana is per se illegal as much as bad in law.

ii] That, plaintiffs also claimed a decree for declaration to the effect that defendant No.1 is encroached on the 6 feet lane in between the house of plaintiffs and defendant No.1.

iii] Plaintiffs also claimed mandatory injunction to remove all encroachment and construction made by defendant No.1 in between the land of house of plaintiffs and defendant No.1.

iv] That, plaintiffs claim damages of Rs.500/- per day for mental harassment and humiliation in the hands of defendant.

v] That, plaintiffs also claim full costs of the suit with any other relief that may be deem to be proper under the fact and circumstances in the interest of justice.

12] So far has prayer No.i, ii and iii are concerned, I am of the view that, Section 6(iv)(j) of the Maharashtra Court Fee Act, 1959 would be applicable. Because, these reliefs are not susceptible of monetary evaluation and which are not otherwise provided for by this Act and therefore value of the subject matter would be Rs.1,000/-. Further so far as prayer No. iv is concerned, it requires evidence of respective parties and in absence thereof this relief cannot be decided.

In the light of aforesaid discussion there is no forceful substance in the application and therefore, the application is liable to be rejected. With this I pass following order :

ORDER

The application (Exh.17) is hereby rejected.

Place: Kamptee
Date : 31/07/2023.

(Amit A.Kulkarni)
Civil Judge, Junior Division,
Kamptee.