

**ORDER BELOW EXH.85**

**R.C.S. No. 107/2016.**

(Passed on : 21.09.2021)

Defendants have filed present application for dismissal of suit U/O-39, Rule-11 and O-7, Rule-11 of C.P.C.

2. Application is filed by defendants on the ground of non-compliance of the order passed at Exh.8 dated 04.01.2017 of the court by plaintiffs and *inter alia*, among other grounds.

3. Plaintiffs have filed say at Exh.90 and denied the application in *toto*. Further, contended that provisions of O-39, Rule-11 and O-7, Rule-11 of C.P.C. are not applicable to the case at hand. Considering urgency, pressed by plaintiffs present application is filed just to prolong the proceedings. Hence, prayed for rejection of the application.

4. Ld. Advocate for defendants Mr. S. A. Gaikawad argued that plaintiffs had filed application for interim injunctions at Exh.5, 27 and 35 respectively. The application at Exh.5 was disposed of by passing order that it will be heard along with suit for want of urgency. Applications at Exh.27 and 35 were not pressed by plaintiffs on 14.07.2021. Hence, same were filed and disposed of by the court. Present application for dismissal of the suit is filed on the ground that on 04.01.2017, the court was pleased to allow the application for appointment of Court Commissioner filed at Exh.08. However, after passing the orders, plaintiffs failed to comply the necessary fees for the appointment of the Court Commissioner. Thereafter, inspite of reminder plaintiffs have failed to comply the order passed at Exh.08. Therefore, for non-compliance of the order at Exh.08 plaintiffs are not

entitled to proceed with the suit. Apart from this, plaintiffs are seeking relief against the order passed by the Ld. Tahsildar Yeola and Ld. S.D.O. Yeola in Easement Case No.13/2011. However, those Revenue Officers are not made necessary party to the suit U/O-27, Rule-1 of the C.P.C. Apart from this, easement case is decided on merit in the Revenue Court, therefore suit is barred as per the principle of *res judicata*. Therefore, the suit is not tenable. Therefore, prayed for dismissal of the suit.

5. Ld. Advocate for plaintiffs Shri. J. R. Shaikh argued that O-39, Rule-11 and O-7, Rule-11 of C.P.C. are not applicable to the present case. Application is filed without cause of action. Therefore, it is mis-use of process of Law. Application is denied in *toto* by the plaintiffs. Para No. 2 to 6 are specifically denied by the plaintiffs. No deliberate delay is caused by the plaintiffs. Applications at Exh.27 and 35 were not-pressed since there were technical errors in the said applications and therefore, with the permission of the Court the same applications were not-pressed by the plaintiffs and fresh application at Exh.74 is filed. Meanwhile, due to Covid-19 Pandemic, effective Court working was affected and during the said period, defendants, with the help of Revenue Authorities are trying to create new road in the suit property. Therefore, to prolong the hearing of application at Exh.74, present application is filed. Therefore, prayed that same be rejected.

6. Perused order passed at Exh.08, plaint, written statement and record of the case. By order dated 04.01.2017, the court was pleased to appoint Deputy Superintendent of Land Record, Yeola as Court Commissioner to inspect the spot. Thereafter, permission was sought by plaintiffs vide application Exh.26. The same was allowed. It

seems that spot inspection by the Court Commissioner is pending for want of necessary fees to be paid by the plaintiffs.

7. As per O-39, Rule-11 of the C.P.C. procedure is given for parties defying orders of the court and committing breach in respect of orders of the court. As per the Rule-11 of C.P.C., if party commits any default in respect of or contravenes order or commits breach of undertaking given by such party, then the court may dispose of the suit or proceeding.

8. In present matter, it is specifically alleged that plaintiffs have not complied with the order passed at Exh.08 dated 04.01.2017. Perusal of the said order shows that said order was passed at the application of the plaintiffs for appointment of Court Commissioner for the inspection of spot. If plaintiffs fail to comply with the order i.e. failed to deposit commissioner fees as per the order, they will face the consequences for non-compliance of the order because as per the submission of the plaintiffs appointment of court commissioner was necessary to decide the suit on merits. At the most the said order will get vacated. Therefore, for non-compliance of the order at Exh.08 the suit cannot be dismissed as per the Order-39, Rule-11 of the C.P.C. Apart from this, so far as O-7, Rule-11 of C.P.C. is concerned, defendants have failed to show under which ground they are relying upon for rejection of the plaint.

9. So far as O-27, Rule-5(A) of C.P.C. is concerned, which say that Government to be joined as a party in a suit against Public Officers. Issue to that effect can be addressed during the trial. Hence, plaint cannot be rejected on this ground.

**Nivrutti Kacharu Kadam.**  
V/s. Baburao Bhikaji Jadhav.

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10. Apart from this, as per Exh.95 plaintiffs have filed application for seeking permission to deposit commission fees assigning reasons therefor. Therefore, considering ready and willingness on the part of the plaintiffs to deposit the commission fees and also for the above reasons, the application deserves to be rejected. Hence, order:-

**ORDER**

1. The application at Exh.85 is rejected.
2. Cost in main cause.
3. Parties to take note and act accordingly.

(Dictated and pronounced in open Court).

**Place : Yeola**  
**Date : 21.09.2021**

**(Atish Pralhad Khollam)**  
**Jt. Civil Judge, Jr. Division,**  
**Yeola, Dist. Nashik.**

**CERTIFICATE**

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer : P.A. Bargal (L.G. Stenographer)  
Name of the Court : Shri. A.P. Kholam, Jt. CJJD,  
Yeola, Dist. Nashik.  
Date of Order / judgment : 21.09.2021.  
Order / judgment signed by  
Presiding officer on : 21.09.2021.  
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