

**Regular Civil Suit No.162/2023**  
**(Old RCS No.222/2018)**  
**(Kaushabai Vs. Shankar and Ors.)**

**Order below Exh.56**

By the application, defendant Nos.1 and 2 sought the rejection of the plaint as per Order 7 Rule 11 of the Code of Civil Procedure, 1908.

2. In short, the facts giving rise to the application are that, the plaintiffs filed the suit for partition, declaration that mutation Nos.593, 1429, and 2769 in favour of defendant Nos.1 to 3 do not create any right, title and interest in their favour with regard to the suit lands, payment of compensation of their share of the acquired suit lands, and permanent injunction with regard to the suit lands bearing block Nos.764/1, 764/2, 764/3, 764/4, 52, 185, 902, 966, 1023, 1027, 538, 686, and 688. It is the plaintiffs' case that, defendant Nos.1 to 3 are their real brothers. Their father Bahiru Trimbak Tambe died on 20.09.2001, and their mother Kaushabai died on 01.07.2004. The aforesaid suit lands are ancestral joint family properties / coparcenary properties of them and defendant Nos.1 to 3. There is no partition of the suit lands between them till date. It is alleged that, defendant Nos.1 to 3 illegally got sanctioned the aforesaid mutations on the basis of false applications and affidavit, and got the suit lands exclusively mutated in their names. They falsely contended before the revenue authorities that, late Bahiru did not have any daughter. In 2017, the suit lands of block Nos.764/1, 764/2, 764/3, and 764/4 came to be

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acquired by the State government for Samruddhi highway. The compensation amount of the said acquisition came to be granted to defendant Nos.1 to 3 exclusively. It is the case of defendant Nos.1 and 2 that, the plaintiffs do not have any locus standi to maintain the suit. There is already partition of the entire land of block No.764 among defendant Nos.1 to 3. The plaint is based upon false and fabricated cause of action. The suit is not maintainable in absence of notice under Section 80 of the Code of Civil Procedure. It is also barred in view of the provisions of Maharashtra Highways Act, 1955('the Act' for short). On the basis of this, defendant Nos.1 and 2 sought the rejection of the plaint as per Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

**3.**The plaintiffs resisted the application by filing their say vide Exh.59. According to them, the suit is for partition with regard to ancestral undivided joint family properties of them and defendant Nos.1 to 3, and therefore, the civil court has very well jurisdiction to try and decide it. The objections raised by defendant Nos.1 and 2 as to maintainability of the suit is frivolous and not tenable in the eyes of law. The application is moved with sole intention to prolong the hearing of the suit. Ultimately, the plaintiffs sought the rejection of the application.

**4.**Heard the learned counsel for both sides. It is well settled principle of law regarding the consideration of the application seeking rejection of plaint as per Order 7 Rule 11(d) of the Civil Procedure Code that, the court only has to consider the averments in the plaint,

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and not the defence case. It has to read the averments in the plaint in entirety, and not in isolation. While considering the objection to the jurisdiction, the court has only to consider the averments in the plaint, and decide whether the jurisdiction of the civil court to try and entertain the subject matter of the suit is either impliedly or expressly barred by law. It need not to consider the defence case while deciding the objection as to jurisdiction of the civil court.

**5.**The plaintiffs filed the suit for partition, declaration that mutation Nos.593, 1429, and 2769 in favour of defendant Nos.1 to 3 do not create any right, title and interest in their favour with regard to the suit lands, payment of compensation of their share of the acquired suit lands, and permanent injunction with regard to the suit lands bearing block Nos.764/1, 764/2, 764/3, 764/4, 52, 185, 902, 966, 1023, 1027, 538, 686, and 688. It is the plaintiffs' case that, defendant Nos.1 to 3 are their real brothers. Their father Bahiru Trimbak Tambe died on 20.09.2001, and their mother Kaushabai died on 01.07.2004. The aforesaid suit lands are ancestral joint family properties / coparcenary properties of them and defendant Nos.1 to 3. There is no partition of the suit lands between them till date. It is alleged that, defendant Nos.1 to 3 illegally got sanctioned the aforesaid mutations on the basis of false applications and affidavit, and got the suit lands exclusively mutated in their names. They falsely contended before the revenue authorities that, late Bahiru did not have any daughter. In 2017, the suit lands of block Nos.764/1, 764/2, 764/3, and 764/4 came to be acquired by the State government for Samruddhi highway. The compensation

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amount of the said acquisition came to be granted in the name of defendant Nos.1 to 3 exclusively.

6. So far as the objection in the light of Section 80 of the Code of Civil Procedure is concerned, the plaintiffs while filing the suit, sought permission to institute it in absence of the same in the light of Section 80(2) thereof. Accordingly, the said application Exh.8 came to be decided on 20.02.2024, and thereby, the plaintiffs are allowed to maintain the suit against government officers defendant Nos.5 to 10 in absence of notice under Section 80 of the Code of Civil Procedure in view of the urgent relief claimed in the suit.

7. By referring to Sub-Section 4 of Section 19C of the Act, it came to be submitted by the learned counsel for defendant Nos.1 and 2 that, in case of dispute as to apportionment of the compensation amount or any part thereof or the person to whom it is payable, the Land Acquisition Officer shall have to refer the dispute to the decision of the Principal Civil Court of Original Jurisdiction within the limits of whose jurisdiction the land is situated. Therefore, according to him, the suit is not maintainable before this court. He relied on the judgments in the cases of **Gokul alias Gopal Dawale Vs. Competent Authority, AIR Online 2022 Bom 1993, Ram Sing Vs. Grampanchayat, AIR 1986 SC 2197, Mrs.Gauri Venkataraman Vs. Vasantiaon, AIR Online 2020 Bom. 2967, Raghvendra Singh Vs. Ram Singh, AIR 2019 SC 1430, N.V.Srinivasa Murthy Vs. Mariyamma, AIR 2005 SC 2897, State of Punjab Vs. Amarjit Singh, AIR 2012 SC (Supp) 601, Laxmi Chand Vs.**

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**Grampanchayat, AIR 1996 SC 523, State of Bihar Vs. Dhirendra Kumar, AIR 1995 SC 1955, and Vinod Kumar Vs. District Magistrate, AIR Online 2023 SC 526.**

8. Section 19C of the Maharashtra Highways Act reads as follows,

(1) The amount determined under section 19B shall be deposited by the State Government, in the prescribed manner, with the Land Acquisition Officer before taking possession of the land.

(2) As soon as may be after the amount has been deposited under subsection (1), the Land Acquisition Officer shall on behalf of the State Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the Land Acquisition Officer shall determine the persons who in his opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the Land Acquisition Officer shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under sub-section (8) of section 19B by the arbitrator is in excess of the amount determined by the Land Acquisition Officer, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 19 till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the Land Acquisition

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Officer, the excess amount together with an interest, if any, awarded under sub-section (5), shall be deposited by the State Government in the prescribed manner, with land Acquisition Officer and the provisions of subsections (2) to (4) shall apply to such deposit.

**9.**Section 19D of the Maharashtra Highways Act confers the powers of civil court on the Land Acquisition Officer as to enforcing the attendance of the witnesses, discovery and the production of the documents, reception of evidence on affidavits and incidental matters thereto. Section 19I of the said Act reads as follows,

(1) Where there is a dispute over the claim of the ownership of any land included in the area under the Scheme, in respect of which a declaration of intention has been made, or any entry in the record of rights or mutation relevant to such disputed claim is inaccurate or inconclusive, in such case, the Competent Authority may, hold an enquiry in the prescribed manner, at any time, before the final allotment of the developed non-agricultural plot or land.

(2)The Competent Authority shall, after giving an opportunity, of being heard to the land owner or person interested, pass an appropriate order, for the purposes of deciding who is the land owner or person interested for the purposes of the Scheme, under his seal and signature.

(3) The aggrieved person may, file an appeal before the competent revenue authority or regular suit in a Court of competent jurisdiction, as the case may be, under the applicable law.

**10.**It is well settled cannon of law that, the civil court always used to have jurisdiction to try and decide every civil dispute unless its

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jurisdiction with regard to the same is either expressly or impliedly barred. There is a presumption in favour of the civil court to have jurisdiction to try and decide every civil dispute. The burden to show that the civil court's jurisdiction to try and decide a dispute is barred, is always upon the defendant.

**11.** Admittedly, the plaintiffs asserted that the suit lands are the ancestral and undivided joint family properties / coparcenary properties of them and defendant Nos.1 to 3 who are their real brothers. According to them, they being the daughters of late Bahiru, have equal share along with their brothers defendant Nos.1 to 3 in the suit lands. There is no partition of the suit lands between them and defendant Nos.1 to 3, and that too with their consent. Defendant Nos.1 to 3 got certain mutations sanctioned by filing false applications and affidavits asserting therein that late Bahiru did not have any daughter. On the basis of such right, they sought share in the compensation of the lands acquired by the state government for Samurddhi Highway. It is seen from the documents filed on behalf of the plaintiffs that, the defendant Nos.1 to 3 strongly contested their claim as daughters of late Bahiru before the Land Acquisition Officer and the revenue authorities. Therefore, the suit involves the determination of aspects whether the plaintiffs are daughters of late Bahiru, and they have right of share in the ancestral suit lands as such. They claimed partition with regard to the other ancestral lands which are not under acquisition. Then the suit cannot be said to be just for apportionment of the compensation amount including to whom it to be paid. Whether the plaintiffs are the daughters of late

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Bahiru or not, and they have right of partition of share with regard to the coparcenary properties could be decided only by the civil court having jurisdiction to decide ordinary civil dispute.

**12.**If we consider Section 19I of the Act, it clearly provides that, in case of any person aggrieved by the decision of the competent authority under the Act as to ownership, the aggrieved person may institute suit in a court of competent jurisdiction to determine his right, title, and interest. Sub Section 4 of Section 19C of the Act provides for reference of the dispute by the Land Acquisition Officer to the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated regarding the apportionment of compensation amount, and any person to whom it or its part is payable. Here, whether the plaintiffs are the daughters of late Bahiru, they are the coparceners with regard to the suit lands, and they have right of partition, are the issues involved in the suit. Then the dispute cannot be said to be purely within the scope of Sub-Section 4 of Section 19C of the Act. In fact, if we consider the provision of Section 19I of the Act, it does not bar the jurisdiction of the civil court to try and decide the dispute as to right, title, and interest of a person with regard to the land under acquisition in order to settle his claim of compensation, to be tried and decided by the competent civil court.

**13.**In the above referred case of **Vinod Kumar**, there was dispute as to apportionment of compensation or the person to whom it is to be paid or part thereof to be paid. Therefore, in similar provision in

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Section 3H(4) of the National Highways Act, 1956, the Apex Court held that such dispute shall be decided by the competent authority under the said Act, and not by the District Magistrate. Hence, the case law is distinguishable on facts and not helpful for the cause of the defence. In the case of **Gokul alias Gopal**, the petitioner's grievance for reference of the dispute of apportionment of the compensation to the court of the principal civil judge, of original civil jurisdiction was sought. It came to be turned down due to huge delay on their part to claim legal right in the land, and their suit for partition and incidental reliefs was pending before the competent civil court with regard to it. The case law is distinguishable on facts, and not helpful for the cause of defence. In the above referred case of **Ram Singh**, it was suit for declaration of title and permanent injunction involving the question to be decided by the Collector under Section 11 of Punjab Village Common Lands (Regulation) Act, 1961, and not by the civil court. Hence, such is not the issue here, and the case law is no way applicable to the present case. The case of **Mrs.Gauri Venkataraman**, is also distinguishable on facts, and not helpful for the cause of the defence. It is not seen that the plaintiffs' cause of action is anyway fabricated and result of clever drafting of the plaint. The case of **Raghvendra Singh**, is also distinguishable of facts involving the issue of limitation, and not helpful for the defence. For the similar reason, the case of **N.V.Srinivasa Murthy** is not helpful for the cause of the defence. In the case of **Amarjit Singh**, it was suit for challenging the acquisition proceeding itself, held to be barred by law. Here, there is no challenge to the acquisition proceeding. Hence, the case law is

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distinguishable on facts, and not at all helpful for the cause of the defence. The cases of **Laxmichand** and **Dhirendra Kumar** were also involved of challenge to land acquisition notification by way of suit, and held to be barred. Hence, both the case laws are no way helpful to decide the controversy.

**14.**Hence, in view of the aforesaid entire discussion, I find no merit in the objection raised on behalf of defendant Nos.1 and 2. The civil court has very well jurisdiction to try and decide the subject matter of the suit. Hence, the objection-cum-application is devoid on merit, and it is liable to be rejected. In the result, I pass the following order,

**ORDER**

- 1.The application stands rejected.
- 2.Cost in cause.

**Date : 27.02.2024.**

**Sd/-xxx  
(M. M. Gadiya)  
Civil Judge, Sr.Div., Sinnar.**