



ORDER BELOW EXH. 86 IN REGULAR CIVIL SUIT NO. 48 OF 2014

[Gajanan N. Kaskar and ors. Vs. Pandurang P. Kaskar and ors.]

1. This application is filed by defendant Nos. 1 to 8 for rejection of the plaint on the ground that plaint is barred by law.
2. It is contended by defendant Nos. 1 to 8 that, plaintiff has filed this suit against defendants for declaration and injunction. Plaintiffs are seeking declaration that mutation entry no. 636 and 1192 be declared as cancelled. It is further contended by the defendants that the relief sought by plaintiffs cannot be granted by civil court as this power is vested with revenue authority. There are provisions for this under sections 149 to 148, 246 and 247 of the Maharashtra Land Revenue Code. Thus this suit is barred by law as civil court has no jurisdiction to declare any mutation entry as cancelled. Thus Defendant nos. 1 to 8 prayed for rejection of the plaint.
3. Plaintiffs have objected the application by filing their say at Exh. 99. They contended that application is illegal and not maintainable. To delay the suit, defendants have filed this application. Suit properties are received by plaintiffs by inheritance and defendant no. 1 to 8 have entered their names on suit properties by giving false information. Therefore, the said entries are wrong and illegal. On the basis of these entries, these defendants No. 1 to 8

have no legal rights. Therefore, suit properties have been inherited by plaintiffs. The cause of action is of civil nature, thus civil court has jurisdiction to try this suit. Hence, they prayed for rejection of the application.

4. Perused application, say and record of the suit. Heard both sides.

5. From the rival pleadings of the parties, following points are raised for my consideration. I have mentioned the same along with findings and reasons thereof as under :

Sr. No.	Points	Findings
1.	Whether defendant Nos. 1 to 8 prove that plaint is barred by law ?	In the negative
2.	What order ?	Application is rejected.

REASONS

6. Plaintiffs have filed verified copy of 8A extract at Exh. 4/1, verified copies of 7/12 extracts of S.No. 59/11, 59/23 at Exh. 4/2, verified copies of mutation entries no. 262,276,375,530, 532,616, 636,1072 and 1992 at Exh. 4/3, copy of notice dated 16.11.2013 sent by the plaintiffs to the defendants at Exh/ 4/3, RPAD receipts at Exh. 4/5 and copy of reply notice dated 02.12.2013 sent by defendants to plaintiffs at Exh. 4/6

7. No documents have been filed by the defendant Nos. 1 to 8.

AS TO POINT NO. 1 :-

8. This application is filed by defendant Nos. 1 to 8 under Order 7 Rule 11 of Code of Civil Procedure. It seems that the defendant Nos. 1 to 8 have objected the suit on ground that suit is barred by law. It is argued by Advocate for defendants that plaintiffs have made prayer for declaration of cancellation of mutation entries. This declaration cannot be granted by civil court. He further argued that power to cancel mutation entries is vested with revenue authorities. Thus he prayed for rejection of the plaint as plaint is barred by law. Advocate for plaintiffs argued that, they have claimed reliefs which are civil in nature. As per order below Exh. 92 plaintiffs have deleted their prayer for cancellation of mutation entry nos. 636 and 1192. Thus as of today there is no relief sought by plaintiffs for cancellation of mutation entry nos. 636 and 1192. thus he prayed for rejection of the application.

9. On perusal of record it reflects that plaintiffs have filed suit for declaration and perpetual injunction. It is objection of the defendant no. 1 to 8 that suit is barred by law on ground that relief sought by plaintiffs could not be granted by civil court. On perusal of the record it reflects that plaintiffs have amended the suit by order below Exh. 92 and have deleted their prayer for cancellation of mutation entry. Thus the objection of defendant nos. 1 to 8 is not in existence as of today.

10. For this purpose defendant nos. 1 to 8 have relied upon ratio laid down in Narayan Mugu Teli Vs. Ramchandra Mugu Teli and ors. cited in 2004(3) ALL MR 880, wherein it it laid down by

Honb'le Bombay High court that it is neither function nor the jurisdiction of civil court to issue direction for making or deleting entries in the record of rights. That is the function to revenue authorities under Maharashtra land revenue code. With due respect to the ratio laid down above I am of the opinion that this ratio is not helpful for the defendants because relief in respect of cancellation of mutation entry is not claimed in the suit.

11. Defendant nos. 1 to 8 have further relied upon ratio laid down in Anandi Bhicaro Veluskar Vs. Kustanand Vithu Veluskar and ors cited in 2006(6) ALL MR 199, wherein it it laid down by Honb'le Panaji Bench, Bombay High court that Court has no jurisdiction to direct revenue authorities to insert name of parties in revenue record. With due respect to the ratio laid down above I am of the opinion that this ratio is not helpful for the defendants because relief in respect of cancellation of mutation entry is not claimed in the suit.

12. Defendant nos. 1 to 8 have further relied upon ratio laid down in Narendra Voikunt Raikar Vs. Amarlal Pereira cited in 2007(3) ALL MR 222, wherein it it laid down by Honb'le Panaji Bench, Bombay High court that, directions by civil court to Collector to make necessary changes in survey record are uncalled and unwarranted under section 106 of Maharashtra land revenue code. With due respect to the ratio laid down above I am of the opinion that this ratio is not helpful for the defendants because relief in respect of cancellation of mutation entry is not claimed in the suit.

13. Defendant nos. 1 to 8 have further relied upon ratio laid down in Damaciano Fernandes Vs. St. Anthony's Chapel and ors cited in 2015(2) ALL MR 576, wherein it is laid down by Honb'le Panaji Bench, Bombay High court that, direction to delete name or to insert some other name cannot be given by civil court to revenue authorities. With due respect to the ratio laid down above I am of the opinion that this ratio is not helpful for the defendants because relief in respect of cancellation of mutation entry is not claimed in the suit. Thus the remaining reliefs sought by plaintiffs in respect of declaration and injunction can be granted by civil court. Thus this court has jurisdiction to try this suit. Thus this suit is not barred by any law. Thus this application deserves to be rejected. Hence I have answered point no. 1 in the negative.

AS TO POINT NO. 2

14. From perusal of the above reasoning I have come to the conclusion that the plaint is not barred by law. Hence, I have answered point No. 1 in negative and to answer to point No. 2, I proceed to pass following order :

ORDER

Application is rejected.

Place: Uran.
Date: 04.05.2024

(Nilesh M. Wali)
Jt. Civil Judge Jr.Divn., Uran.