

ORDER BELOW EXHIBIT 27 IN REGULAR CIVIL SUIT NO.112/2021
(CNR No.:-MHRG14-000918-2021)

Ziaul Mazid Nazir Sonde V/s. Vijai Pratap Kanshiram Malhotra & Ors.

1. This application is filed by defendant Nos. 1 & 5 for rejection of the suit on the ground that this court has no jurisdiction to try and entertain the suit as suit is barred by law.

2. It is contended by defendant Nos. 1 & 5 that, plaintiff has filed this suit against defendants for declaration and injunction. In the suit plaintiff has objected about the boundaries of the suit property. But as per Section 135 of Maharashtra Land Revenue Code, dispute concerning boundary of a field or holding of any village or survey number or sub division of a survey number shall be decided by the Collector. Thus, this court has no jurisdiction to decide boundary dispute of plaintiff. Thus, this suit is barred by law. Hence, defendant Nos. 1 & 5 prayed for rejection of the plaint under Order 7 Rule 11(d) of Code of Civil Procedure.

3. Plaintiff has objected the application by filing his say at Exh. 36. He contended that application is illegal and not maintainable. To prolong the matter defendant Nos. 1 & 5 have filed this application. He further stated that he is owner of suit property. Defendant Nos. 1 & 5 have titled this application as application for rejection of plaint and prayed to return the plaint. Thus, there is contradictory statement by defendant Nos. 1 & 5 themselves. Plaintiff has filed suit for declaration that plaintiff and defendant Nos. 6 to 12 are owners of suit property and for injunction against defendants. This relief could be granted only by Civil Court. Thus, this is not boundary

dispute covered under section 135 of Maharashtra Land Revenue Code. Thus, this court has jurisdiction. This suit is not barred by law. Hence, he 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 & 5 proves that suit is barred by law ?	In the negative
2.	What order ?	Application is rejected.

REASONS

6. Plaintiff has filed certified copy of 7/12 extract of S.No.73/6/A situated at Mhatwali at Exh.3/1, certified copy of 7/12 extract of S.No.73/11 situated at Mhatwali at Exh.3/2, certified copy of survey map of suit property at Exh.3/3, letter dated 06.07.2021 given by Uran Police Station to plaintiff at Exh.3/4, notice dated 02.09.2021 given by Uran Police Station to plaintiff at Exh.3/5, photo copy of reply dated 04.09.2021 by plaintiff to Uran police station at Exh.3/6. Plaintiff also filed original copy of notice published by him in Dainik 'Wadalvara' news paper dated 01.05.2022 at Exh.35/1.

7. **AS TO POINT NO.1 :-**

This application is filed by defendant Nos. 1 & 5 under Order 7 Rule 11(d) of Code of Civil Procedure. Advocate for the defendant Nos. 1 & 5 argued that plaintiff has filed this suit about boundary dispute and boundary disputes could be decided only by Collector of district as per Section 135 of the Maharashtra Land Revenue Code. Thus, Civil Court has no jurisdiction and this suit is barred by law. Advocate for the plaintiff argued that plaintiff has not filed this suit in respect of boundary dispute, but plaintiff has filed this suit for declaration that plaintiff and defendant Nos. 6 to 12 are owners of suit property and for injunction against defendants. This relief could be granted only by Civil Court. Collector cannot grant this relief. Thus, this is not boundary dispute covered under section 135 of Maharashtra Land Revenue Code. Thus, this court has jurisdiction. This suit is not barred by law.

8. Section 135 of the Maharashtra Land Revenue Code runs as follows -

“Dispute regarding boundaries between villages, survey numbers and sub-divisions - if any dispute arises concerning the boundary of a village or a field or a holding which has not been surveyed, or if at any time after the completion of a survey a dispute arises concerning the boundary of any village or survey number or sub-division of a survey number, it shall be decided by the Collector after holding a formal inquiry at which the village officers and all persons interested shall have an opportunity of appearing and producing evidence”.

9. Thus, as per section 135 of Maharashtra Land Revenue Code, where there is dispute in respect of boundary of any survey

number, it could be only decided by Collector. On perusal of the reliefs sought by the plaintiff in this suit it reveals that plaintiff has filed this suit for declaration that plaintiff and defendant Nos. 6 to 12 are owners of suit property and for injunction against defendants. Plaintiff has also sought injunction against defendants for restraining them from obstructing enjoyment of suit property and restraining defendants from making any kind of encroachment. Thus, from perusal of the reliefs claimed in the plaint, it clears that plaintiff has not sought redressal of relief in respect of any boundary dispute. The relief of declaration and injunction could not be granted by the Collector. This relief could only be granted by Civil Court. Thus, as rightly argued by advocate for plaintiff, this is not suit of boundary dispute covered under section 135 of Maharashtra Land Revenue Code. Thus, this court has jurisdiction to try and decide this suit. Thus, this suit is not barred by law. Hence, I have answered point No. 1 in negative.

10. Defendant No. 1 has relied upon ratio laid down in Ram Shankar Vs. Balakdas, LAWS (MPH) 1991 8 26, wherein it is held by Hon'ble Madhya Pradesh High Court that, in a suit claiming right, title and interest in any property on a basis of Will, no issue can be struck to decide if that Will was last will and was a valid Will and the other Will which is purported to revoke had been duly and validly revoked by the Will relied on by the plaintiff. Where the suit appears from the statement in the plaint to be barred by any law, plaint is liable to be rejected. With due respect to the ratio laid down above I am of the opinion that ratio is not applicable to the case in hand because facts of case cited supra and facts of case in hand are

different. This suit is not barred by any law as stated by defendant Nos. 1 & 5. Thus, this ratio is not helpful for defendant Nos. 1 & 5.

AS TO POINT NO. 2 :

11. From perusal of the above reasoning I have come to the conclusion that suit is not barred by law i.e section 135 of Maharashtra Land Revenue Code. Hence, in answer to point No. 1 in negative, I proceed to pass following order :

ORDER

Application is rejected.

Place: Uran.
Date: 17/08/2022.

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