

ORDER BELOW EXH. 45

IN R.C.S.No.159/2015

This is an application filed by defendants for framing additional issues regarding jurisdiction to try and entertain the suit. Defendants submitted that the right of ownership regarding suit property is vested with Charity Commissioner and Wquf Board Aurangabad. This fact has been stated in the written statement of these defendants. Therefore, this Court is not having jurisdiction to entertain and try the suit. Therefore, it is necessary to frame preliminary issue in this regard. Hence, the present application.

Plaintiff submitted his say at Exh.46 and resisted the application on the ground that the jurisdiction of Wquf Board is limited. This suit is perpetual and mandatory injunction as defendants have caused obstruction and constructed the house in the suit property. Plaintiff is praying for removal of the same. The relief is personal in nature therefore, this Court is having jurisdiction. Further the suit is instituted in the year 2015 and matter is posted for evidence. In such circumstances, application regarding framing additional issue is not tenable.

Heard both parties. After perusal of record, it appears that issues have been framed on 30.03.2016 at Exh.28. Though defendants have raised their objection regarding jurisdiction but, the issue was not framed at relevant point of time. Further defendants have not taken any

efforts to modify or recasting the same. At present plaintiff with the help of amendment seeking mandatory injunction. Defendants have also submitted their additional written statement. Matter is posted for framing additional issues. Therefore, the issue regarding jurisdiction can be framed as an additional issue. But, there is no need to try the issue of jurisdiction as a preliminary one. Therefore, the application needs to be filed. In the result, I proceed to pass following order.

Order

1. Application is filed.
2. No order as to costs.

Date : 07/03/2020
Kavathe-Mahankal.

[S.A.Kulkarni]
Civil Judge, Junior Division,
Kavathe-Mahankal.

R.C.S.No.159/2015

Below Exh.28

Additional issues.

1. Does plaintiff proves that defendants have constructed house having iron sheet without permission in the suit property during pendency of the suit ?
2. Does plaintiff is entitled for demolition of said house and possession of land ?
3. Does plaintiff is entitled for mandatory injunction as prayed ?
4. Whether this court has jurisdiction to try and entertain the suit ?
(As per order below Exh.45.)

Date : 07/03/2020

Kavathe-Mahankal.

[S.A.Kulkarni]
Civil Judge, Junior Division,
Kavathe-Mahankal.