

ORDER BELOW EXH.15 IN R.C.S. NO. 499/2024

This is an application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as C.P.C.) for rejection of the plaint.

2. It is contended that the plaintiff has filed the suit for the declaration and perpetual injunction. The plaintiff has claimed a declaration regarding the order passed by revenue officers. In such cases, the plaint is barred by the law, and the civil court cannot try to entertain or decide on the suit. Hence, he prayed for the rejection of the plaint.

3. On the other hand the plaintiff has filed his say (**Exh.20**) and contended that the defendant has not specifically mentioned the provision which bars the Court's jurisdiction to entertain the suit. According to Section 138 of the Maharashtra Land Revenue Code (hereinafter referred to as M.L.R.C.), an affected person can approach the Civil Court within one year from the date of passing of the order of ejectment or from the date when he is ejected. Circle Officer issued notice to the plaintiff and thereby intimated taking possession of the suit property. Therefore, the plaintiff has filed this suit. Hence, he prayed for the rejection of the application.

4. Heard learned counsel for the defendant and the plaintiff.

5. The following points arise for the determination. I record my findings thereon for reasons stated hereinafter.

POINTS

FINDINGS

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| 1. | Whether plaint is liable to be rejected under Order VII Rule 11 of C.P.C. as it barred by law? | No. |
| 2. | What order? | The application is rejected. |

REASONS

Points Nos.1 and 2:

6. Perused application, say and record. The suit is filed for declaration and perpetual injunction. The defendant does not mention the provision of law under which this plaint is barred. However, during an argument, the learned advocate for the defendant submitted that **Section 4 (a), (fc) and 11 of The Bombay Revenue Jurisdiction Act, 1876** bars the jurisdiction of the Civil Court to entertain the instant suit. Therefore, it is necessary to see what those sections say. According to Section 4 of the Bombay Revenue Jurisdiction Act, Subject to the exception hereinafter appearing, no civil Court shall exercise jurisdiction as to any of the following matters:

(a) claims against the Government relating to any property appertaining to the office of any hereditary office appointed or recognised under Bombay Act NO. III of 1874 or any other law for the time being in force, or any other village officer or servant or claims to perform the duties of any such officer or servant or in respect of any injury caused by exclusion from such office or service, or suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by the State Government or any officer duly authorised in that behalf.

(fc) suit to compel the performance of any duty imposed on any Revenue Officer by or under any law relating to land revenue.

7. Section 11 of The Bombay Revenue Jurisdiction Act, 1876 says that, except as otherwise provided in the M.L.R.C., no civil Court shall entertain any suit against the Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as within the period of limitation allowed for bringing such suit, it was possible to present.

8. On the other hand the learned advocate for the plaintiff relied upon **Rajani Rankhambe versus Muktabai Pund Writ Petition No. 2884 of 2016** wherein paragraph no. 6 it is observed that “Learned District Judge held that the plaintiff has instituted the suit for agitating title within one year from the date of finality of the order passed by Minister for Revenue dated 30.09.2015. In paragraph 20, the learned

District Judge recorded that if the application for interim relief is rejected and the plaintiff loses possession, the entire suit will become infructuous. Hence, the petition fails and the same is dismissed.”

9. The above-mentioned sections referred by the learned advocate for the defendant are applicable when the suit is filed against the Government. The said suit is not filed against the Government. Therefore, the bars mentioned in those sections are not applicable. Further, the notices issued by Circle Officer dated 20.09.2024 and 02.01.2025 (**Exh.3/5 and 26/1**) show that he intimated the plaintiff and others taking possession of Block No. 48 (the suit property) based on the order passed in R.T.S. 214/2023. Hence, the plaintiff is constrained to file the instant suit for declaration of title to the suit property and perpetual injunction. Suits relating to the declaration of the title can be only decided by the Civil Court. Revenue Officers do not have the jurisdiction to adjudicate issues relating to the ownership of the suit property. Moreover, **Section 138 (4) of M.L.R.C.** states that where any person has been ejected or is about to be ejected from any land under the provision of sub-section (2), he may within a period of one year from the date of the ejection or the settlement of the boundary, institute a civil suit to establish his title thereto. Therefore, it cannot be said that the jurisdiction of the Civil Court is barred to entertain this suit. The provision stated by the defendant does not oust the jurisdiction of the civil Court. It only can be said so when a statute specifically creates a bar to entertain the suit.

10. Therefore considering the above discussion it is clear that nothing can prohibit the plaintiff from filing the suit. Hence, the answer to point no. 1 is in negative and I pass the following order.

ORDER

1. The application is rejected.
2. Costs in main cause.

Date: 17.02.2025

Place: Karad

(P. G. Shelar)

6th Jt. C.J.J.D., Karad.