

Common Order Below Exh.21, 22 & 23 in R.C.S.No.67/2015

Since learned Advocates for the parties advanced arguments commonly and the fact that the applications are interlinked to each other, I am deciding it in single order. In all the applications, defendants are seeking rejection/return of plaint.

2) Read, perused say (Exh.26). Heard. Concluding right now, that the plaintiff is trying to construct against the building permission will be a pre-trial decree. Hence, plaint cannot be rejected on that count. Hence, the application (Exh.21) is rejected as of now.

3) As far as application at Exh.22 is concerned, plaintiff has not sought any relief in respect of encroachment. But suit is filed for injunction simplicitor. Obviously, suit will be viewed from that angle. Hence, it is difficult to presume at this stage that for want of compliance under Order 7 Rule 3 of C.P.C., plaint needs to be returned.

4) As far as application at Exh.23 is concerned, it is the contention of the defendant that the municipal council is necessary party. It is to be noted that, the plaintiff has not sought any declaration in respect of disputed notice or any act of the municipal council. Subject matter of the suit is act of the defendant. Hence, suit being one for injunction simplicitor, plaintiff is domainus litus to decide its rivalry. Hence, it cannot be presumed as ground under Order 7 Rule 11 of C.P.C. Hence all the applications are liable to be rejected. Hence order.

ORDER

- (1) Applications (Exh.21, 22 and 23) are rejected.
- (2) Cost in cause.

Date : 06/11/2015.
Mahabaleshwar.

(P.A.Kumbhojkar)
Civil Judge, Junior Division,
Mahabaleshwar