

MHST200000632024



R.C.S No.25/2024

Shobha & Ors. vs. State of Maharashtra & Ors.

ORDER BELOW EXH.01

Suit is fixed for order below Exh.05. But before passing order below Exh.05, it is necessary to decide the objections so raised by defendants Nos.4, 5, 7 to 20, 24 to 28, 32 & 34.

2] These defendants appeared and filed Say/Written Statement vide Exh.48. These defendants raised objection under Order VII Rule 11(a)(b)(c)(d) of the Code of Civil Procedure (in short 'CPC') and prayed for rejection of plaint. All these objections were argued by learned advocate for these defendants. In answer to the said objections, learned advocate for plaintiffs also argued the points. Thus, it is necessary to decide these objections.

3] Heard Mr.VH.Karnade, learned advocate for defendants. Heard Mr.C.B.Pandit , the learned advocate for plaintiffs.

4] These defendants raised objection under Order VII Rule 11(a) of CPC that there is no cause of action to file the suit. Learned advocate for plaintiffs argued that the cause of action well mentioned in the plaint itself.

5] Perusal of plaint paragraph No.11 discloses cause of action.

Thus, the objection so raised is not maintainable.

6] Defendants raised further objection that suit is undervalued and insufficient court fee stamp paid. Learned advocate for plaintiffs has pointed out plaint paragraph No.12.

7] Perusal of plaint paragraph No.12 shows proper valuation and sufficient court fee stamp. Noting contrary to that effect is brought on record by defendants. Thus, the objection so raised under Order VII Rule 11(b) and (c) are not maintainable.

8] Learned advocate for defendants has vehemently argued that suit is barred by law as no prior permission of charity commissioner has been obtained for impleading defendant No.33 as party to the suit. Further the order passed by SDO and Tahasildar cannot be the subject matter of the suit. These two aspects are barred by law. In answer to the said objections, learned advocate for plaintiff has argued that there is no necessity to obtain such prior permission. Plaintiffs are not merely challenging the order passed by SDO and Tahasildar but they are challenging the procedure so adopted without impleading plaintiff Nos.1 and 2 as necessary parties to the proceedings.

9] Admittedly defendant No.33 appears to be Trust. But, it appears that plaintiff have impleaded defendant No.33 only because the Trust was party to the revenue proceeding wherein the relief is claimed against plaintiffs. Thus, prior permission of charity commissioner is not necessary. Regarding the subject matter of the suit, apart from the orders passed by defendant Nos.2 and 3 plaintiff Nos.1

and 2 are prejudiced by the alleged illegal activities on the basis of order passed by defendant Nos.2 and 3. Thus, it cannot be said that such suit is barred by law. Thus, objection so raised under Order VII Rule 11 (d) is not maintainable.

10] The other objection raised by defendants is that description of suit property is wrong and that suit property is not specified by four boundaries. According to plaintiffs defendants are trying to create approach way from their Gat No.369/1. These properties are not reflected in the order passed by revenue officers.

11] Learned advocate for defendants relied upon ratio laid down in M/s Nari Shringar Big Bazar and Anr. vs. M/s Pantaloon Retailing (India) Ltd. and Anr. reported in 2008 (4) All M.R. 394. It is held that “ where immovable property subject matter of suit- plaintiff is expected to give description of property sufficient to identify it ”.

12] It reveals from the document No.13 of the list vide Exh.03 that Gat No.369/1, was disclosed in the letter dated 25/11/2023 to the police station. Thus, had it been the case of defendants that the description of the properties so mentioned is wrong or not given then the defendants ought to have submitted the correct description of suit property. The relief as to approach way from the Gat No.369 so obtained by these defendants in view of order passed by defendant Nos.2 and 3 could have brought on record the existence and exact description of the road.

13] The subject matter of the suit appears to be “that approach way” which has been granted by order of defendant Nos.2 and 3 but actually it does not exist. Thus at the initial stage there is no question of the description of properties. Even otherwise also, it is curable defect and plaintiffs can justify the same if required. The nature of suit appears to be in the form of protective relief against the alleged order wherein plaintiff Nos.1 and 2 neither the party nor their property Gat No.369/1 was inclusive in the revenue proceeding. Thus, the authority cited Supra is not helpful to the defendants. For all the aforementioned reasons following order is passed :-

ORDER

1. The objections so raised as per order VII Rule 11(a) (b)(c) & (d) are not maintainable.
2. Prayer for rejection of plaint is rejected.

Wai
Date: 21.09.2024

(Priti D. Taru.)
Civil Judge Senior Division, Wai
Dist-Satara.

CERTIFICATE

I am affirm that the contents of this P.D.F., file Order are same, word to word, as per the original order.

Name of the Stenographer :- Gauri Mahesh Kulkarni (Steno Grade-II)
Court :- Civil Judge Senior Division, Wai.
Dist. Satara.

Date :- 21.09.2024

Order signed by the presiding officer on :- 23.09.2024

Judgment/order uploaded on :- 24.09.2024