



ORDER BELOW EXH.27 IN R.C.S. NO.191/2023

(CNR No. MHWS02001107-2023)

Nandkishor Somani Vs. Talathi, Ansing & Ors.

1] Defendant Nos.1 & 2 (who are Talathi & Revenue Circle Officer *respectively*, Ansing) have filed this application under Order 7 Rule 11 (d) of the Civil Procedure Code, 1908 (for short 'C.P.C.') for rejection of the plaint on the ground that the suit is barred by Section 158 of the Maharashtra Land Revenue Code, 1966 (for short 'M.L.R.C.') & Section 41(h) of the Specific Relief Act, 1963 (for short 'S.R. Act').

2] **Contents of this application, in nutshell, are as follows:-**

The plaintiff has filed the present suit for perpetual injunction to the effect that defendant Nos.1 & 2 be restrained from -

- i) acting upon mutation entry (for short 'M.E.') No.5152 which was sanctioned on the basis of the sale deed dated 01/09/2023 pertaining to the land admeasuring 00 H. 81 Are out of Block No.447 total admeasuring 03 H. 65 Are situated within the jurisdiction of Ansing, Tq. & Dist. Washim, more particularly described in para No.1 of the plaint (for short 'suit land'), and -
- ii) taking further entries in revenue record of the suit land ; till decision of R.C.S. No.82/2019 & Spl.C.S. No.42/2022.

3] It is contention of defendant Nos.1 & 2 that they have sanctioned M.E. No.5152 after following due process of law. According to them, the plaintiff has remedy to challenge the said M.E. No.5152 by way of filing an appeal under Section 257 of the M.L.R.C. before Sub-Divisional Officer (for short 'S.D.O.'). Washim. Defendant Nos.1 & 2 have further stated that the plaintiff himself has stated in para No.7 of the plaint that he has challenged M.E. No.5152. It is, thus, contention of defendant Nos.1 & 2 that the Civil Court has no jurisdiction to direct Revenue Authority to take or delete any entry in any record or register maintained under Chapter - X of the M.L.R.C., in view of Section 158 of the M.L.R.C. They have, thus, stated that suit is barred by Section 158 of the M.L.R.C. Defendant Nos.1 & 2 have further stated that the plaintiff is having equal efficacious remedy for challenging M.E. No.5152 & therefore, the Civil Court cannot grant injunction as sought by the plaintiff in view of Section 41(h) of the S.R. Act. It is, thus, contention of defendant Nos.1 & 2 that the suit is barred by Section 41(h) of the S.R. Act. With this, they have prayed that this application be allowed & thereby, the plaint be rejected.

4] The plaintiff has filed his say to this application vide Exh.30. He has stated that defendant Nos.1 & 2 have wrongly interpreted the provision of Section 158 of the M.L.R.C. According to the plaintiff, defendant Nos.1 & 2 are acting in collusion with executants of the sale deed dated 01/09/2023 & others also. The plaintiff has specifically stated that defendant Nos.1 & 2 are not following the relevant procedure laid down under the M.L.R.C., and therefore, decision of the suit requires evidence. With this, the

plaintiff has prayed for rejection of this application.

5] I have heard Ld. A.G.P Smt. Kulkarni for defendant Nos.1 & 2 and Ld. Advocate Mr. Deshmukh for the plaintiff at considerable length, and have gone through record of the suit.

6] Before proceeding any further, I shall at the threshold mention that Order 7 Rule 11 (d) of the C.P.C. provides that '*the Court shall reject the plaint where the suit appears from the statement in the plaint to be barred by any law.*' However, Section 158 of the M.L.R.C. provides that '*no suit shall lie against the State Government or any officer of the State Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter or to have any such entry omitted or amended.*' However, Section 41(h) of the S.R. Act provides that '*the Court cannot grant injunction when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.*'

7] I have minutely gone through contents of the plaint. Although defendant Nos.1 & 2 have stated that the plaintiff has stated in para No.7 of the plaint that the plaintiff has challenged M.E. No.5152 before S.D.O., Washim ; yet contents of para No.7 of the plaint are silent to that effect. However, it is seen that in para No.8 of the plaint, the plaintiff has stated that while sanctioning M.E. No.5152, defendant Nos.1 & 2 did not follow the procedure laid down in the Maharashtra Land Revenue Record of Rights & Registers (Preparation & Maintenance) Rules, 1971. Said contents of the plaint purport to show that the plaintiff is about to state that defendant

Nos.1 & 2 have not acted & will not act in conformity with fundamental principles of judicial procedure. In this juxtaposition, I would like to mention that if any Authority/Tribunal has not acted in conformity with fundamental principles of judicial procedure, then jurisdiction of the Civil Court cannot be said to have been ousted in view of the ratio laid down in the case of **Dhulabhai & Ors. Vs. The State Of Madhya Pradesh & Anr., reported in 1969 AIR 78.**

8] It is apposite to note that while deciding an application under Order 7 Rule 11 (d) of the C.P.C., the Court is supposed to look into averments of the plaint only. It is, however, pertinent to note that whether defendant Nos.1 & 2 have followed or they are following the fundamental principles of judicial procedure will be decided after considering evidence adduced by parties to the suit during course of the trial. Having regard to contents of the plaint, more particularly appearing in para No.8 thereof, in the light of the ratio laid down in **Dhulabhai's** case cited *supra*, I am of the considered view that the suit cannot be said to have been barred by Section 158 of the M.L.R.C. at this stage.

9] It is worth to note that the plaintiff has not challenged M.E. No.5152 in the present suit. Admittedly, the plaintiff has sought the relief of perpetual injunction for restraining defendant Nos.1 & 2 from acting upon M.E. No.5152 & from taking further entries on the basis of M.E. No.5152. Therefore, although the plaintiff has equal efficacious remedy to challenge M.E. No.5152 before S.D.O., Washim ; yet the suit cannot be said to have been barred under Section 41(h) of the S.R. Act.

10] Thus, in the light of aforesaid discussion, I have no hindrance to hold that the plaint is not liable to be rejected under Order 7 Rule 11 (d) of the C.P.C. In the result, I am inclined to hold that this application being sans merits is liable to be rejected. With this, I proceed to pass the following order -

ORDER

- 1] Application Exh.27 stands rejected.
- 2] Costs in cause.
- 3] Parties to the suit shall take note of this order.

Washim.
Date - 05/09/2024.

(S. S. Ubale)
Civil Judge, (Sr. Div.), Washim.

CERTIFICATE

I affirm that the contents of this PDF file Issues are same word to word, as per original Issues.

- 1) Name of Stenographer :- S. P Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 05/09/2024
- 4) Order signed by the :- 05/09/2024
presiding officer on
- 5) Order uploaded on :- 05/09/2024