

ORDER BELOW EXH.11

The defendant has filed this application for rejection of the plaint under O. VII R. XI of the Civil Procedure Code. The plaintiffs filed his at Exh. 16.

2. The contention of defendant is that, the plaintiff has filed this suit for injunction. As per statements in the plaint this suit is not tenable. Way from joint dhura (Boundary) of Gut no. 30, 29 and 28 is the dispute in this suit. Regarding this disputed way, the litigation is pending before Commissioner, Amravati. The dispute is pertaining to the Mamlatdars Court Act and Maharashtra Land Revenue Code, therefore the plaintiff can sought relief only under the revenue laws before the revenue authorities. Therefore, this court has no jurisdiction to try this suit.

3. He further contended that, the Tahsildar, Karanja had granted way to the defendant from joint dhura of Gut No. 30, 29 and 28 vide order dated 26/12/2001. In the same order, the plaintiff was also restrained from creating obstruction in use of said way to the defendant. Appeal filed by the plaintiff challenging this order was dismissed on 20/01/2003. Thereafter, the civil suit bearing R.C.S. No. 14/2003 filed by the plaintiff seeking declaration and injunction against the defendant was also dismissed on 06/08/2004. He further filed an application for delay condonation in appeal before Hon'ble District Court, Washim, but the same was also dismissed on 03/03/2006. Therefore, it is clear that the order dated 26/12/2001 passed by Tahsildar, Karanja is confirmed. On 21/09/2005, the way granted by the Tahsildar was opened on 21/09/2005. The defendant was continuously using the said way till July 2014.

4. In July 2014, the plaintiff obstructed to the defendant from using the way in dispute. Therefore, the defendant made application before Mamlatdar but the same was filed by the Mamlatdar on 21/07/2014. Appeal filed by the defendant challenging said order dated 21/07/2014 was allowed on 09/06/2016 by the Sub Divisional Officer, Karanja. Again the order dated 21/07/2014 passed in appeal was challenged before Additional Collector, Washim and it was

allowed on 09/06/2016. Said order dated 09/06/2016 passed by the of the Additional Collector, Washim was challenged before Additional Commissioner, Amravati in Appeal No. 277/BND-54/Belmandal/2015-16. In said proceeding, the order of the Additional collector, Washim dated 09/06/2016 was stayed till further orders. The plaintiff filed Writ Petition before the Hon'ble Bombay High Court, Bench At Nagpur and challenged the order of Additional Commissioner, Amravati. Thereafter, the plaintiff closed the said disputed way on 13/11/2016. Thus, as there are various pending litigations between the plaintiff and the defendant before various revenue authorities, this court has no jurisdiction to interfere in the revenue jurisdiction. Therefore, this suit in not maintainable.

5. In addition to the ground mentioned in the application, during the course of arguments learned advocate for the defendant raised additional ground for rejection of the plaint that, earlier civil suit of the plaintiff bearing R.C.S. No. 14/2003 is dismissed. Therefore, as per order VI Rule 16 of the Code of Civil Procedure, this present suit is not maintainable as it is re-litigation. On these grounds the defendant has prayed to reject the plaint.

6. The plaintiff in his reply at Exh. 16, denied the contentions of defendant and submitted that, the defendant has created the new way from the plaintiff's filed therefore this suit for permanent injunction is filed against the defendant. It is further contended that, the plaintiff has not filed this suit for the way from joint dhura of Gut no. 30, 29 and 28. Whatever grievance he had against said way is raised by him before the appropriate court. Hence, this court has jurisdiction to try the instant suit. This application is false and not tenable. Hence, the plaintiffs prayed for rejection of the application.

7. Heard both the sides at length. Perused records. It is settled law that, while deciding the application under Order VII R. 11 of the CPC, the court has to consider only pleadings/ averments made in the plaint. At that stage, the plea taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the averments in the plaint. Therefore, in light of this settled position of law, I have carefully scrutinized the pleadings of

the plaintiff and the grounds raised by the defendant in the instant application. During pendency of this application the plaint is amended. Therefore, I have to consider the amended plaint on record.

8. Foremost contention of the defendant is that, as there are litigations between the parties before the revenue authorities are pending, this court has no jurisdiction. In support of this contention, the defendant has not placed reliance on any specific provision of the law. Whereas, the general rule of law is that, under wide compass of Section 9 of Civil Procedure Code, existence of jurisdiction has to be presumed and not the bar. Apart from this, Plea of the plaintiff in para no. 5 A of the plaint is that, the defendant has created new way from the crops of the plaintiff. From this plea, it appears that the instant suit is for restraining the defendant from using said new way from the field of the plaintiff. Therefore from the pleadings in the plaint, prima facie it appears that, the instant suit is for the injunction simplicitor filed under Section 38 of the Specific Relief Act. Therefore, no doubt that this court has jurisdiction to entertain this suit for injunction.

9. Another ground raised by the defendant is that, the earlier suit of the plaintiff i.e. R.C.S. No. 14/2003 was on the same ground and it was dismissed. Therefore, the instant suit on the same ground is the re-litigation and it is an abuse of process of law as per Order VI Rule 16 of the Civil Procedure Code. In support of his contention, the defendant relied upon the authority of The Hon'ble Bombay High Court in the case of SNP Shipping Services Pvt. Ltd. vs Kara Mara Shipping Co. Ltd.; [(2000) 1 Mh.L.J. 699] wherein it is held that, *"The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are*

absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.”

10. In light of these observations, I have perused the plaint in the earlier suit, filed by the defendant at document no. 3 along with the list dated 03/03/2003. It was the suit seeking declaration against the order of Tahsildar along with injunction. Whereas, in the instant suit the pleadings in the plaint shows that this suit is based upon the fresh cause of action dated 15/12/2016. Therefore, this suit cannot be considered as the re-litigation based upon the same facts. Therefore, with utmost respect I am of opinion that in light of the facts and circumstances of this case the authority cited by the defendant is not helpful to his case. Provision under Order VI Rule 16 is for striking out pleadings whereas, the Provision under Order VII Rule 11 is for rejection of the plaint for the grounds mentioned therein. Both these provisions are different along with its own object. Therefore, the plaint cannot be rejected on this ground as well.

11. Thus, in view of the above discussion, plaint cannot be rejected upon the contentions of the defendant and the present application is liable to be rejected. Hence, in the result the following order:-

ORDER

Application stands rejected with cost.

Karanja.
Dated: 27/08/2021.

Sd/-
(K. K. Chaudhari)
Jt. Civil Judge Junior Division,
Karanja, Dist. Washim

CERTIFICATE

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

Name of Steno. :- R. A. Charthal (Stenographer-3)

Court Name :- Jt Civil Judge (Jr. Dn.) and J.M.F.C.,
Karanja (Lad), Dist. Washim.

Date :- 27/08/2021

Order signed by :- 27/08/2021
the presiding
officer on

Order uploaded :- 27/08/2021
on