

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1879 OF 2015

Indumati w/o Daulatrao Patil

...Petitioner

versus

The Chief Officer,
Municipal Council, Sillod

...Respondent

.....
Mr. P.F. Patni, advocate for the petitioner
Mr. S.D. Hiwrekar, Advocate for respondent
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 04.01.2016**

**Date of pronouncing
the Order: 19.01.2016**

ORDER:-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. The petitioner-plaintiff instituted a suit for declaration and for decree of perpetual injunction. The petitioner-plaintiff is seeking a declaration that notice issued by the defendant in respect of construction of plot Nos. 11 and 12 out of survey No. 378 situated at Sillod, is incorrect, void and illegal. The learned Judge of the trial court, by impugned order dated 30.3.2012 below Exh.1 in Regular

Civil Suit No. 6 of 2006, returned the plaint to the petitioner-plaintiff for filing it before the appropriate forum and also extended the interim protection of status quo granted below Exh.5 for further period of six weeks from the date of order. Being aggrieved by the same, the petitioner-plaintiff preferred Misc. Civil Appeal No. 125 of 2012 before the District Judge, Aurangabad. The learned District Judge-2, Aurangabad by its judgment and order dated 4.8.2014 dismissed the appeal. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the trial court without framing any issue in respect of jurisdiction of civil court returned the plaint when particularly nobody has challenged the jurisdiction of the civil court. Learned counsel further submits that the suit is at the fag end and only final arguments are to be heard. Learned counsel thus submits that the trial court ought to have delivered the judgment on all issues instead of deciding the issue of jurisdiction only, which is not framed at all. Learned counsel further submits that the issue of jurisdiction in the facts and circumstances of the present case, is mixed question of law and fact and it cannot be decided merely looking to the notice alleged to have been issued under section 53 of Maharashtra Regional Town Planning Act, 1966 by the respondent. Learned counsel further submits that the courts below have not appreciated import of Order XIV Rule 2 of Code of

Civil Procedure, 1908.

4. Learned counsel for the respondent/original defendant submits that Section 53 of M.R.T.P. Act confers powers on the planning authority for removal of unauthorized construction. Thus, the suit is barred under Section 149 of M.R.T.P. Act. The trial court has rightly decided that the suit is not maintainable and accordingly returned the plaint to the petitioner for filing it before appropriate forum. Learned counsel further submits that the writ petition is devoid of any merits and thus liable to be dismissed.

5. The provision of Order XIV Rule 2 of C.P.C. is divided into sub Rules (1) and (2). The first sub Rule incorporates normal rule that all issues arising in a suit must ordinarily be tried together notwithstanding that a case can be disposed of on a preliminary issue, and the second sub Rule provides limited exception to the ordinary rule of trial. Order XIV Rule 1 of C.P.C. makes it obligatory to the Court to pronounce the judgment but it is subject to the provision of Sub Rule 2 which gives discretion to the Court to frame issue of law only if all relates to the jurisdiction of the Court or a bar for institution of suit itself. In the case in hand, the issue relating to jurisdiction has not been framed at all, leaving apart to decide whether such issue is pure question of law or mixed question of law

and facts. The courts below have not specified in their respective orders as to under which provisions of C.P.C., the impugned order of return of plaint came to be passed. In view of provisions of Order VII Rule 11 of C.P.C. the plaint can be rejected where a suit appears, from the statement in the plaint, to be barred by any law. Whereas Order XIV Rule 2 Sub Rule (2) gives discretion to the Court to frame issue of law if it relates to the jurisdiction of the Court or a bar to institute the suit itself and may deal with the suit in accordance with the decision on that issue.

6. In the light of the above discussion, the impugned order is not sustainable in law. However, it appears from the pleadings that the petitioner/plaintiff is seeking declaration about notice issued under Section 53 (1) of the M.R.T.P. Act, 1966 by the respondent/defendant to remove unauthorized development/work as null and void. It is for the trial court to take further steps in the suit as permissible in law for deciding the issue of jurisdiction by passing an appropriate order in accordance with law, after hearing both sides. Hence, the following order:-

ORDER

I. Writ petition is hereby allowed.

- II. The order dated 30.03.2012, passed by the learned Civil Judge, Junior Division, Sillod below Exh.1 in R.C.S. No. 6 of 2006 confirmed by the learned District Judge-2, Aurangabad by order dated 4.8.2014 in Misc. Civil Appeal No. 125 of 2012, is quashed and set aside.
- III. The trial court make take further steps as permissible in law in the suit for deciding the point of jurisdiction by passing appropriate order in accordance with law, after hearing both sides.
- IV. Writ petition is disposed of accordingly. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/