



Order below Exh. 117 in  
Regular Civil Suit No. 228 / 2017  
CNR Number is MHKO050022512017  
(Passed on 07.08.2024)

Defendant Nos. 1 and 2 have filed this application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint (Exh.1) challenging the jurisdiction of this court under the Mamlatdar's Courts Act, 1906.

**02.** It is contention of the defendant Nos. 1 and 2 that, defendant No. 3 Mamledar / Tahasildar, Hatkanangale has issued a notice under Mamlatdar's Court Act dated 10-07-2017 under Section 14, Schedule A/B. The said notice is issued by the Tahasildar asking the defendants why an action should not be taken under section 5(2) of the Mamlatdar's Courts Act, 1906 against them. Therefore, the plaintiff has filed this suit for cancellation of the said legal notice issued by Tahasildar. It is further contended by defendant Nos. 1 and 2 that, Mamlatdar's Court is a independent Tribunal. It has specific jurisdiction to try the matters, and the civil court is barred. Further contended that, as per section 180 of Village Panchyat Act, such suit is barred in the Civil Court. Tahasildar court is empowered to give decisions on the boundaries of agricultural land under section 143 of the Land Revenue Code, 1966. It is not maintainable in Civil Court. The notice issued by Tahasildar is under Section 5 (2) of the Mamlatdar's Courts Act for hearing. The notice is

illegal and void. All the powers relating to hearing, adjudicating the matters is with said Mamlatdar's Court and not Civil Court. Therefore, the Civil Court cannot issue injunction against said notice. No such civil suit can be filed in Civil Court. As such, the defendants cannot be prevented from any proceedings. It is further contended that, as per Land Revenue Code Section 158, no civil suit can be filed in civil court. It is further contended that, Village Panchayat is autonomous body having powers to provide water, roads facilities to the citizens. There was a resolution passed by Village Panchayat dated 20-04-2016 granting "Moghi Mal Road" from MLA funds vide Gramsabha Resolution No. 2. Accordingly, Village Panchayat filed an application to the Tahasildar to provide the panand road / road i.e. Moghi Mal Road and provide access to Hatkanangale State high way. Therefore, Mamlatdar's Court has every jurisdiction to adjudicate the matters regarding such roads. Hence, prayed for rejection of the plaint (Exh.1).

**03.** The plaintiff has filed say at Exh. 120 and opposed the application. According to the plaintiff, all the contentions in the application under Order VII Rule 11 of the Code of Civil Procedure filed by defendant Nos. 1 and 2 are false and imaginary. The suit is maintainable and not barred by any law. The Civil Court has every jurisdiction to try the cases and pass injunction etc. The nature of the present suit is civil as per

Section 9 of the Code of Civil Procedure. The court has to see only averments of the plaint (Exh.1). It is not necessary to see the written statement. As per the citation “*Southern Automatic Industries Pvt. Ltd., vs. Mrs. N. S. Talpade; Mh. L. J. 545; 1998 (3)*” *Mah. Law General, 545*”, the suit is not barred by any law.

04. Whenever the rights over the properties became disputable, civil suit can be filed. The suit property is belonging to present plaintiff along with exclusive possession thereof. Defendants have no concern with the ownership or possession of the suit property. The present plaintiff do admit the same. Despite, the defendants are trying to disturb the possession of the plaintiff. The Civil Court has every jurisdiction to try such suits as per the case law *1996 (1) Mh. L. J. 1976, 1996 (4) Bom. C. R., 88*. Therefore the application for rejection of plaint is liable to be rejected. Further in case of “*Commander Prabhat Kumar Ram vs. Dr. Mrs. Savita Mahindra Ram and another; 1996 (1) Bom. C. J. 487*” the issues of facts and law can be considered together to decide the jurisdiction of Court. As far as the section 9 (c) clause 2 and section 9 clause 1 CPC, civil court can pass interim injunction irrespective of things mentioned in section 9. Further, it is mentioned that, some parties had filed an application for adding party under Order I Rule 10 of the Code of Civil Procedure, but rejected by the Court. Those orders are still in existence and not set-aside. It is further contended

that, defendant Nos. 1 and 2 are responsible for providing services, facilities in gavthan area i.e. City Survey properties. They have no right to decide the things which comes under the jurisdiction of Village Panchayat as per Bombay Village Panchayat Act, 1958. Further, Tahasildar also has stayed the proceedings till decisions of this suit. Defendants have not come with clean hands before the court. Hence, prayed for rejection of the application under Section VII Rule 11 of the Code of Civil Procedure (Exh.117).

**05.** The following points arise for consideration of the court and my findings thereon are with reasons as under :-

Sr. No.	Points	Findings
01.	Whether the suit is barred by law ?	No
02.	What order ?	The application is rejected.

### **REASONS**

#### **As to Point No. 1 and 2 :-**

**06.** The question involved in the present matter is jurisdiction of this Civil Court to decide the legality of the notice issued by Tahasildar in the proceeding before him regarding road. For this, I have to see legal provisions regarding this. Firstly I have gone through section 5 of Mamlatdar's Court Act, 1906. This section is regarding powers of Mamlatdar's Court. In

the said section it is mentioned that, the Mamlatdar Court has powers to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agricultural, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon. Again to give immediate possession of any lands or premises etc.

**07.** It means that, the Mamlatdar's Court has every powers regarding the agricultural land as mentioned in Section 5 of the Act. As per sub section 2 of the Section 5 Act, it also has power to issue injunctions within certain limits. In case of any disturbance, obstructions, possession of any lands or premises used for agricultural land, grazing, trees, crops or fisheries etc. as mentioned in the section.

**08.** All these above provisions defined the powers of Mamlatdar's Courts. Now the issue before this court is, whether the plaintiff can file the present suit before this civil court despite already a proceeding is pending before Mamlatdar's Court regarding same issue. Further it is questioned that, whether the notice issued by Tahasildar can be declared null and void or illegal by this court.

09. As far as the powers of Civil court to decide the legality of the notice issued by Tahasildar is concerned, first it has to be seen whether the civil court is barred from taking cognizance and trying in suit regarding the notice issued by Tahasildar under Mamlatdar's Courts Act. At the outset, after hearing both the parties and perusing the record and law regarding this issue, I cannot find anything to bar the jurisdiction of civil court. The defendants have not shown how the jurisdiction of civil court is expressly barred by any provisions of law. As far as the Mamlatdar's Courts Act is concerned, I could not find there is any express bar to the civil court. In fact the powers of both courts i.e. Mamlatdar's Courts and civil courts are different. The powers of Mamlatdar's courts under section 5 of the Mamlatdar's Courts Act are regarding the administrative issues has mentioned in the section. Mamlatdar is empowered to adjudicate those issues. No doubt, if the jurisdiction of the Mamlatdar's Courts is defined in section 5 of the Act, the Civil Court may not interfere with his powers. But before coming to the conclusion, it has to be identified the powers of both courts at their own places. Section 5 states the powers of the Mamlatdar's Court to remove or cause to be removed any impediment erected otherwise than under due authority of law to natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on to any adjacent land, where such impediment causes or is likely

to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon; to give immediate possession of any lands or premises used for agricultural or grazing or trees or crops or fisheries, or to restore the use of water from any well tank, canal or water course, whether natural or artificial used for agricultural purposes to any person, who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by the reason of the determination of any tenancy or other right of any other person, not being a person, who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner.

**10.** Further provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or to give possession of any such property or to restore any such use to a person, who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that, such case can be more suitably dealt with by a civil court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

**11.** As far as the present application under Order VII Rule 11 of the CPC is concerned before me, the issue before me

is not regarding any administrative things or the powers of the Mamlatdar under section 5 of the Mamlatdar's Courts Act, rather the issue before me is only to decide the legality of the notice issued by Mamlatdar Court. As far as this court is concerned, no express bar against the Civil Court in Mamlatdar's Courts Act. As far as to decide the legality of the notice issued by Mamlatdar or any authority whatever may be, the civil court can adjudicate thereon. It is a civil issue to decide the legality.

**12.** As far as this issue is concerned, definitely civil court has jurisdiction to check the authority, legality of the notice issued by Tahasildar. Obviously Civil Court is above to the Tahasil Court to adjudicate the civil matters. I have gone through the particular notice issued by Tahasildar dated 10-07-2017, which is at Exh. 34. I have also gone through the other papers produced by the Plaintiff i.e. 7/12 extract, bank papers, mortgage deed etc.

**13.** It is the specific contention of the plaintiff that, there is no any existing road in the suit property. The defendants have been trying to create new road forcibly by using the powers of government, which is an injustice to the plaintiff. The plaintiff strongly contends that, he is exclusive owner and possessor of the suit property. He explained the 7/12 extract about the potkharab clause A and clause B land.

According to him, there is no mention of road / rasta in potkharab land, therefore, all the contentions of the defendants are untrue. There is no road available in the suit premises, therefore, whatever the defendants are doing is wrong with the plaintiff. Therefore, the legality of the notice is to be checked by the civil court and protect the interest of the plaintiff. I find substance in the contentions of plaintiff that, there is no mention at least prima-facie about the existence of road there. However, this is a matter of merit. It is not good to touch it here. Whether the road exists there or not ? It is not a question of this court at least at this time. Because this is a plain application under Order VII Rule 11 of the Code of Civil Procedure deciding the jurisdiction of the court only.

**14.** As far as the defendants are concerned, they have also strongly argued in the matter contending that, Mamlatdar's Court has every right and powers to decide the issues regarding roads etc. A road already exists from the property, but the plaintiff is denying unnecessarily. The plaintiff is opposing the public road by which hundreds of people may get affected and face trouble due to not having road or access from the suit property.

**15.** For this the defendant have to show that, how the civil court has no jurisdiction to decide the legality of the notice. I have gone through all the documents produced by the

defendants. Obviously the defendants have also tried to prove the road is existing from there etc. They have also produced the google map, photo of the road, letter and Village Panchayat to the Tahasildar asking for removal of encroachment from Moghi Mala panand rasta, resolution of the Village Panchayat regarding the road, letter of the Hatkanangale Rashtrawadi Congress Party to Tahasildar regarding removal of encroachment, letter of Talathi to the Upper Tahasildar, Ichalkaranji for the said issue, Mortgage Deed. I also perused the affidavits given by defendant Nos. 1 and 2 regarding the issue and existence of the road. Not only this, the defendants have also placed reliance in the case of *Vishwanath s/o Rambhaji Bhalerao and another vs. Usha w/o Pralhad Kasbe; 2011(1) Mh.L.J.; 603;* wherein it is held, jurisdiction under Mamlatdar's Court under section 26(b) operates only when it is pointed out that civil suit was filed prior to institution of proceedings under section 5.

16. On the other hand, the plaintiff has also placed reliance in the case of (A) "*Nanda S/o Barku Sathawane and another vs. Shankar S/o. Sitaram*" dated 18<sup>th</sup> April 1991, (B) "*Girish Manohar Wazalwar vs. Purushottam Parasram Kotangale*"; BCR 1996 (4), 88, 1995 CJ (Bom) 163; (C) AIR 2007 Bom. 90; section 9 application is not allowed for the defendant because the application has been moved in the court with vexatious intent.

17. ***Rajendra Sheshrao Shendge vs. Shobhatai Shrirao Ravate; 2007 CJ (Bom) 1092.*** Considering the ratio above laid down, I am of the considered view that, the civil court has jurisdiction to decide the legality of the notice of the Mamlatdar's Courts. It is neither impliedly nor expressly barred in jurisdiction of civil court.

18. Further I have also carefully read written arguments advanced by both the parties. I also heard orally to both the learned advocates. Having regard to each and every aspect of the case and all the documents, citations available before me, I am of the considered view that, the civil court is not barred to take cognizance of the present case. The suit is maintainable. Therefore, obviously the plaint cannot be rejected. Hence, I answer point No. 1 accordingly and pass the following order :-

**ORDER**

The application (Exh.117) stands rejected.

Date : 07.08.2024.

**(B. T. Yengade)**  
Jt. Civil Judge Senior Division,  
Ichalkaranji