

MHLA110002522025



ORDER BELOW EXH.21 IN
RCS NO.47/2025
SUDHABAI VS. CLLECTOR & ORS.

1. This is an application filed by defendant No.5 to 8 under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint.
2. Perused the application and say filed thereon. Heard Learned Counsels for the both sides.
3. Learned Counsel for defendant No.5 to 8 submitted that, plaintiffs have filed this suit for declaration of ownership and cancellation of order passed by Tahasildar and for perpetual injunction. Defendant No.5 to 9 had filed application under Section 5 of the Mamlatdars' Courts Act, 1966 for removal of encroachment against natural flow of water which was allowed, but plaintiff preferred revision before Sub-Divisional Officer under Section 23 of the Mamlatdars' Courts Act, 1966 and same is pending. Plaintiff has already initiated the revision before S.D.O., Nilanga and the appropriate remedy is available to them under the Mamlatdars' Courts Act, 1966. Therefore, the subsequent relief claimed by the plaintiff by filing this suit is clearly barred by the provisions of the law. The Mamlatdar Court is quasi judicial authority having special provision of appeal and revision against the judgment of Mamlatdar Court. As alternative remedy is available to plaintiff, the plaint is liable to be rejected. Hence, it is prayed to reject the suit.
4. Plaintiffs have resisted the application and submitted that the application is frivolous, misconceived and not maintainable in the eyes of law. It has been filed only to delay the and harass the plaintiff. The plaint discloses complete and valid cause of action. The application is filed with malafide intention. Therefore, the

application is not tenable and liable to be rejected. Hence, it is prayed to reject the application.

5. The following points arise for my determination to which I have recorded my findings for the reasons stated as under:

<u>Sr.No.</u>	<u>Points</u>		<u>Findings</u>
1)	Whether this Court has jurisdiction to try this suit?	...	In the Affirmative.
2)	What order?	...	As Per Final Order.

REASONS

AS TO POINT NO.1 :-

6. It is well settled that the question of jurisdiction, whether the suit is exclusively triable by Revenue Court and Civil Court has no jurisdiction to try the same, in that case averments in the plaint are carefully to be looked into and all the allegations made in the plaint should be taken into consideration for the purpose of determining the question of jurisdiction. It is also further settled law that it is a substance of the plaint and the true nature of the suit that is to be seen to determine the question of jurisdiction. If in the substance, the relief claimed is one which the Revenue Court alone is entitled, the jurisdiction of Civil Court will be ousted. It is also well settled law that, plaint cannot be automatically rejected at the threshold solely on the ground that the suit might be barred by the Section 41(h) of the Specific Relief Act as alternative remedy is available to the parties.

7. It is important to note here that, Section 5 (1) of the Mamlatdars' Courts Act empowers Mamlatdar to refuse to exercise the power under the said provision if it appears to him that such a case can be more suitable to dealt with by Civil Court. Moreover, though there is a revision provided under Section 23 of the said Act to challenge the order of Mamlatdar under Section 5, the Act of 1906 nowhere attaches finality either to the order passed under Section 5 by Mamlatdar on merits or to the order passed in

revision under Section 23 of the said Act. Therefore, in the absence of such finality being attached to the order passed under the Act, the jurisdiction of the civil court cannot held to be impliedly barred, merely because the act provides a separate machinery for getting the grievance redress. The ouster of plenary jurisdiction of civil court cannot be readily inferred and such jurisdiction remains intact and available to be exercised either against the order under Section 5 or against the order under Section 23 of the said Act. There are multiple authorities of Hon'ble Apex Court holding that the jurisdiction civil court is not barred even the revision application is filed under Section 23 of the Mamlatdars' Courts Act. Therefore, considering the above mentioned settled laws and discussion, it is clear that this Court has jurisdiction to try the present suit. Hence, I record my finding to Point No.1 'in the affirmative'.

AS TO POINT NO.2 :-

8. In view of above mentioned discussion, Civil Court has jurisdiction to try the present suit, I hold that application is liable to be rejected. Hence, I pass the following order:-

ORDER

- 1) Application at Exhibit No.21 is hereby rejected.
- 2) Suit to proceed further.

Date:- 26/11/2025

(Smt. V. D. Bhosale)
Jt. Civil Judge Sr. Dn., Nilanga.