ORDER BELOW EXH. NO.26 IN RCS NO.27/2024
Shobha Vs. State and others
(Order Passed on this 16th Day of July, 2024)
CNRNO.MHLA170001342023.

Defendants No.3 to 5 have filed application under Order VII Rule 11 (b and d) of the Civil Procedure Code for rejection of plaint. The plaintiff has filed suit against defendants No.1 to 3 praying for permanent injunction restraining defendants No.1 to 3 from creating new road through S.No.196/A ad-measuring 0H 81R. Plaintiff is having agricultural land in S.No.196/A and defendants No.3 to 5 are having land in S.No.196/B. There is one Nalla passing through land of plaintiff and defendants No.3 to 5. towards western side of Nalla there is Kanheri walk way. Defendants No.3 to 5 are using walk way situated next to S.No.196/A to approach their agricultural land situated in S.No.196/B. The said walk way is mentioned in 7/12 extracts of S.No.196/A and 196/B, since their four fathers and it is also mentioned present in 7/12 extract. No one has raised objection about it.

2. Defendants No.3 to 5 are using said walk way since their four fathers. Plaintiff and her husband are causing obstruction and interference to defendants No.3 to 5 to use said walk way. They have closed the walk way by putting branches of the tress in between the road. Therefore, defendant No.3 had filed application before the Tahasildar Ausa under section 5 of the Mamlatdar Court Act for removing the obstruction from the road and for permanent injunction against plaintiff and her husband. After visiting the spot the Tahasildar, Ausa has passed Order that, the said walk way is in

existence since the four fathers of plaintiff and defendants. He has granted permission to use the walk way during the rainy season to defendants No.3 to 5 and further restrained plaintiff and her husband from causing obstruction and interference in the said walkway.

3. Accordingly the application of defendant No.3 was allowed. No revision was filed against said order by plaintiff. Said order passed by Tahasildar Ausa is still in existence. There is no appeal filed in the Civil Court or before the Collector against the order. There is bar to file suit in the Civil Court as per provisions under section 23 of the Mamlatdar Court Act. Therefore, defendants No.3 to 5 prayed that, the plaint be rejected as per provisions under Order VII Rule 11 (a) and (b) of the Civil Procedure Code.

4. Perused the say (Exh. 29) of plaintiff. He has deniedcontents of para No.2, 3 and 4 of the application. It is further submitted by the plaintiff that, the suit is not barred by any law. Therefore, the application filed by defendants No.3 to 5 under Order VII Rule 11 (a) and (b) of the Civil Procedure Code is not tenable. They have no locus-standy to file said application. Section 23 of the Mamlatdar Court Act is regarding the appeal against Order passed by the Tahasildar. The suit filed by plaintiff is not appeal against the order passed by the Tahasildar, but it is a Civil Suit. Defendants No.1 to 5 in collusion with each other have caused threat to the property of plaintiff. Hence, the plaintiff has filed this suit against defendants which is legal. This Court has jurisdiction to try and entertain the suit

against the Order of Tahasildar. Defendants are trying to create new road from the portion of land of the plaintiff. Therefore, the plaintiff is constrained to file this suit. Hence, the plaintiff prayed to reject the application of defendants No.3 to 5.

5. In view of rival contentions of both the parties, following points arose for my determination. I have recorded my findings thereon for the reasons stated hereunder :-

	POINTS	***FINDINGS***
1	Whether the suit is barred by any law ?	No.
2	What order ?	The application is rejected.

R E A S O N S

6. Heard learned counsel for defendant No.3 to 5. He argued that, as per provisions under Section 23 of the Mamlatdars Court Act no appeal can be filed against the Order of Tahasildar. This Court has no jurisdiction to try the suit filed by the plaintiff by challenging the Order of Tahasildar, Ausa. Hence, the suit is barred by law. Therefore, the learned counsel for defendants No.3 to 5 prayed to reject the plaint. The learned counsel for plaintiff argued that, there is no bar to file the suit. The suit filed by the plaintiff is purely of civil nature. It is not a appeal against the Order of Tahasildar. This Court has jurisdiction to try and entertain the suit challenging the Order of the Mamlatdar or the Sub-Divisional Office. Hence, the learned counsel for the plaintiff prayed that, the application filed by defendants No.3 to 5 be rejected.

7. In support of his argument the learned counsel for plaintiff relied on the case of ***Digambar and others Vs. Vasant and others, Bombay High Court, 2022(2) BCR 154.*** It is held by the Honourable High Court that, Mamlatdars' Courts Act, 1906, Sections 5(2) – Jurisdiction of Mamlatdar vis-a-vis jurisdiction of Civil Court – Decretal of suit granting perpetual injunction restraining them from creating any way or cart track through his property – Held, order of Mamlatdar does not supersede powers of Civil Court to decide dispute between parties touching dispute regarding obstruction to way – Order passed by Mamlatdar would be subservient to decision of a competent Civil Court in a proceeding preferred before it.

In the present matter the order of Tahasildar is challenged before this Court. The Order passed by the Tahasildar cannot supersede the power of this Court. Therefore, the decision of this Court will be binding on the parties. Hence, the above discussed case is applicable to the case in hand.

The learned counsel for plaintiff further relied on the case of ***Vasudev Pandharinath Raikar and others Vs. Manoj Mohan Dalvi and others, Bombay High Court, 2018(4) Mh.LJ 927.*** It is held by the Honourable High Court that, Civil Procedure Code, 1908 Section 21 Mamlatdar's Courts Act, 1906, Section 5 – Jurisdiction of Civil Court – Suit for injunction – Respondents are not challenging the order of the Mamlatdar or the Sub-Divisional Officer – They have filed the Suit simplicitor for injunction, restraining the petitioners from causing obstruction to their possession in the suit lands and from

using the alleged road for their access – Even assuming that they are challenging the said orders indirectly, considering the legal position, the Civil Court has jurisdiction to entertain, try and decide the suit challenging the order passed under Section 5 of the Mamlatdar's Courts Act.

In the present case the plaintiff is seeking injunction against defendants challenging the Order of Tahasildar passed under section 5 of the Mamlatdar Courta Act. The facts of the above discussed case are the same as the facts of the present case. Hence, the above discussed case is applicable to the suit in hand.

AS TO POINT NO.1 :-

8. Perused the record and documents filed by both the parties. The plaintiff has filed suit for injunction restraining defendants No.1 to 5 from causing obstruction in the suit land by creating new road from the suit land by taking disadvantage of order passed by Tahasildar (defendant No.2). Section 23 of the Mamlatdar Courts Act is regarding the remedy of appeal or revision for challenge the order of Tahasildar passed under section 5 of the Mamlatdar Courts Act. In view of ratio led down by the Honourable High court Aurangabad Aurangabad bench in ***Digambar and others Vs. Vasant and others, Bombay High Court, 2022(2) BCR 154*** and ratio led down by the Honourable Bomaby High Court in the case of ***Vasudev Pandharinath Raikar and others Vs. Manoj Mohan Dalvi and others, Bombay High Court, 2018(4) Mh.LJ 927*** this Court has jurisdiction to try and entertain the suit for injunction against defendants. Challenging the Order passed by the Tahasildar

(defendant No.2) passed under section 5 of the Mamlatdar Courts Act. Therefore, there is no bar of any law to file the suit against defendants. The application filed by defendants No.3 to 5 cannot be considered. Hence, I answer point No.1 in the negative.

AS TO POINT NO.2 :-

9. In view of facts and circumstances discussed in point No.1, it is crystal clear that, there is no bar to the suit filed by the plaintiff against defendants for injunction restraining them from creating new road from the suit land. Hence, application filed by defendants No. 3 to 5 is liable to be rejected. Therefore, in answer to point No.2, I pass following order :-

O R D E R

The application is rejected.

DISTRICT COURTS MAHARASHTRA

Digitally signed by Parvez Isahaquekhan Mokashi
Date: 2024.07.19 17:29:03 +0530

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa, District Latur.

Date: 16.07.2024