

MHLA170006202025



Order below Exh.21 in R.C.S. No.44/2025.
Hanmant Narayan Madje Vs. Tahsildar
(Order passed on 4th February, 2026.)

Defendant Nos. 2 to 6 have filed application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint. They submit that, defendant Nos. 2 to 4 have filed application before Nayab Tahsildar according to Section 5(2) of the Mamlatdar Court Act, 1906 for removing obstruction from the road passing through the common bandh situated between survey No. 136 and 151 situated at Ausa. Accordingly, the application of defendant Nos. 2 to 4 was allowed on 19/08/2025 directing removal of obstruction from the road passing through the common bandh between survey No. 136 and 151. However, the plaintiff has challenged this order before this Court and prayed for permanent injunction which is not tenable in the eyes of law. This Court has no jurisdiction to entertain the suit against the order passed by the Nayab Tahsildar, Ausa as per provisions under Section 5(2) of the Mamladar Court Act. Therefore, the plaint of the plaintiff be rejected as per provisions under Order VII Rule 11 of the Code of Civil Procedure. Hence, defendant Nos. 2 to 6 prayed that, their application be allowed.

2. The plaintiff has filed his say below Exh. 22 objecting the application on the grounds that, defendant Nos. 2 to 4 have filed the

application before Nayab Tahsildar by concealing material facts on the basis of false information. The plaintiff has denied that the suit is illegal. On the contrary, it is alleged by the plaintiff that defendant Nos. 2 to 4 falsely mentioned in their application under Section 5(2) of the Mamlatdar Court Act that, there was road in existence from the common bandh situated in between survey No. 136 and 151. However, there was no such road in existence. The Nayab Tahsildar has not inquired about the same and had passed illegal order under Mamlatdar Court Act, 1906 against the situation at the spot. Therefore, said order can be challenged before the Civil Court. Hence, the plaintiff has filed this suit challenging the order of Nayab Tahsildar. Defendant Nos. 1 to 6 have filed this application only to harass the plaintiff. Therefore, it is prayed by the plaintiff that, the application be rejected.

3. 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 :-

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

REASONS

4. Heard learned counsel for defendant Nos. 2 to 6 and learned counsel for plaintiff.

AS TO POINT NO.1 :-

5. Perused the documents on record. It reveals that, plaintiff has filed the suit for permanent injunction against defendants. It is regarding order passed by defendant No. 1 for removal of obstruction from the road passing through the common bandh of survey No. 136 and 151. However, it is the contention of the plaintiff that, there is no such road is in existence from the common bandh situated in between survey No. 136 and 151 therefore the order passed by defendant No. 1 is illegal. However, the burden lies upon the defendant Nos. 2 to 6 to prove how this Court has no jurisdiction to try the suit. Similarly, burden lies upon the plaintiff to prove that, there is no such road is in existence from the common bandh situated in between survey No. 136 and 151. Therefore, at this stage this Court cannot come to the conclusion that, this Court has no jurisdiction unless prove by defendant Nos. 2 to 6 by leading evidence during the course of trial. Thereby, defendant Nos. 2 to 6 failed to prove that, the suit is barred by any law. Hence, I answer point Nos. 1 in negative.

AS TO POINT NO.2:-

6. In view of above discussed facts and circumstances, it is proved that, the suit is not barred by any law. The burden lies upon defendant Nos. 2 to 6 to prove the same during the course of trial by leading sufficient evidence. Therefore, the plaint cannot be rejected at the outset without

considering the factual aspect pleaded by the plaintiff in the plaint. Hence, the application filed by defendant Nos. 2 to 6 is liable to be rejected. Thus, in answer to point No.2, I pass following order :-

ORDER

The application is rejected.

Date: 04.02.2026

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