

MHND270008522020**R.C.S. NO. 93 OF 2020**
Vithal V/s Sahebhrao & ors.**ORDER PASSED BELOW EXH. 13**
(PASSED ON 10th November - 2021)

- 1) Perused application and say of plaintiff thereon filed on Exh.15. Heard Ld. Advocates for both the parties.
- 2) The defendants filed this application stating that the present suit is not maintainable, challenge to the order passed by Tahsildar in the capacity of Mamlatdar is not maintainable and the present suit is barred by the principle of resjudiceta because Tahsildar Mudkhed in the exercising the power of Civil Court under The Mamlatdar's Court Act, 1906 passed order on dt.11/07/2020.
- 3) On the contrary plaintiff opposed to the application and submitted that he filed present suit under Section 9 of the Code of Civil Procedure. He has right to filed suit against the order of Tahsildar. He protect his legal right. The suit is not barred by any provision provided in Section 11 of the Code of Civil Procedure. Accordingly prayed to rejected the application.
- 4) Ld. Advocate for plaintiff also relied upon *Vasudev Pandharinath Raikar and Ors V/s Manoj Mohan Dalvi and ors in Civil Writ Petition No.1826/2018 before Hon'ble Bomvay High Court decided on 23rd March 2018*. I have gone through the submissions of both the parties and records it appears that the present suit is filed for perpetual injunction restraining the defendant from obstructing the peaceful possession of plaintiff over the suit land. The plaintiff also prayed to declare that the order of Tahsildar dated 11/07/2020 in respect of Cart route (Gadi Rasta) is not binding upon them. The order passed by the Tahsildar under Section 5 of The Mamlatdar's Court Act, 1906. It is submission of Ld. Advocate for the plaintiff that defendants are having another road at their field. However, by joining hands with other defendants and

Revenue Officers they have obtained order dated 11/07/2020 in respect of another Cart route i.e. Gadi Rasta. He also submitted that the defendants themselves already close the permanent road adjacent to the canal to reach their land. The defendants have 8 feet road from the western side of the plaintiffs land. This fact is disclosed by panchanama made by Tahsildar Mudkhed itself. Besides it Tahsildar Mudkhed Sanctioned another Cart route (Gadi Rasta) from plaintiffs land. Hence plaintiff prayed for interim relief to protect his legal right under Section 9 of the C.P.C.

5) I have gone through authority cited by the plaintiff Supra. Wherein Hon'ble Bombay High Court referring the case of Md. Rahim Khan V/s Shankar Maruti Dhage and Ors, 2017(3) Bom.C.R.472 observed that Civil Court has jurisdiction to entertain, try and decide the suit challenging the order passed under Section 5 of Mamlatdar's Courts Act. It was also observed that if the Civil Court is having jurisdiction to try and entertain the suit challenging the order passed under Section 5 of the Mamlatdar's Courts Act, then there is no question of resjudiceta. In the present matter also the plaintiff challenged the order passed by the Mamlatdar's Court. The authority cited by the plaintiff is applicable to the present case. There appears no express bar to out-stand the jurisdiction of this Court. In such circumstances and consideration observed of Hon'ble High Court authorities cited Supra I am view that the present application filed by raising the plea of resjudiceta is deserved to be rejected. Hence, I pass following order.

:: ORDER ::

1	Application is hereby rejected.
2	No order as to cost.

Pronounced in open Court.

Sd/-

Place: Mudkhed
Date: 10.11.2021

(**S. B. Dhembare**)
Civil Judge Junior Division
Mudkhed Dist. Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment are same word to word, as per the original judgment.

Name of the stenographer	:	A. A. Totre
Court Name	:	J.M.F.C. Mudkhed
Date	:	10.11.2021
Judgment signed by the Presiding Officer on	:	10.11.2021
Judgment Uploaded on	:	10.11.2021