

**ORDER BELOW EXHIBIT-17 IN R.C.S.32/2021**  
(Passed on 03.07.2023)

1) This is an application filed by defendant No.1 under Section 21 of Code of Civil Procedure, 1908 has taken objection as regards to the jurisdiction of the Court and prayed to dismissed the said Suit. The defendant contended that the plaintiff has filed the present suit for declaration and permanent injunction. The plaintiff has no locus standi to file the present suit and this Court has no jurisdiction to try and entertain in the suit. As per the plaintiff's case the contention mention in plaint para No.2, it appears that, Tahsildar authority allotted the plot No.4 adm. 30 x 50= 1500 Sq.ft. out of field gat.No. 165/166, area 1.21 H.R. situated at Chapegadi in revenue Case No.15/LNA-2/1997-98, Mauza Chapegadi and plaintiff has deposited of Rs.600/- in the Treasury on 13.08.1998 and concerned authority measured the plot and placed into possession of plot No.4. the plaintiff has maid vague and misleading pleading in absence of proof of possession receipt of plot No.4. The procedure of delivery of possession of said plot to the plaintiff is not fulfilled i.e. Taba Receipt till today and the said process is under control and power of the State authority. Plaintiff has not filed Taba receipt documents on recored, which is very important and vital document. Plaintiff has pleaded the fact he has deposited of Rs.6000/- date wise but failed to mention date, month and year of possession of plot No.4 in favor of plaintiff in the suit therefore it is apparently clear that State authority Thasildar Kuhl has not delver the possession of plot No.4 in favour of plaintiff. It is specifically submitted by the defendant plaintiff has filed the suit in between two private parties in relation to plot No. 4. he has not made a party to the S.D.O., Tahsildar as a party

defendants in the suit . The suit is illegal and bad in the eyes of law liable to be dismissed, if the it is entertained by the court is will adversely affect interfere in the rights of State authority it is liable to be allowed.

2) The application is resisted by the plaintiff overleaf of his say. The application is strongly opposed as the same is not under valuable in the eyes of law. It is further submitted that the objection taken by the defendant is mixed question of law which will be decided after adducing evidence during trial. The Thasildar has given the Certificate of Ownership of plot No.4 alongwith the possession. The defendant has taken the said objection simply to prolong the matter. Hence, application is liable to be rejected.

3) Heard learned advocate for the plaintiff and defendant. Considering the pleadings, material on record and arguments advanced at bar, following points arise for my determination and I have record my findings thereon, for the reasons discussed herein below.

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the suit appears from the contents in the plaint to be barred by Section 21 of Code of Civil Procedure and thereby liable to be dismissed ?	... No
2.	What Order?	Application is rejected.

**REASONS :**

**AS TO POINT NO.1 AND 2:**

4) I have heard argument of advocate for the plaintiff. I have also gone through the pleadings of the parties. It is the suit for declaration and for permanent injunction. The objection given by the defendant is of two fold. Firstly – the Tahsildar the Government authority has not handed over the possession to the plaintiff and plaintiff till date has not got Taba receipt, plaintiff has misleded to the Court by stating vague pleading in absence of proof of possession. Secondly- the objection raised by advocate for defendant is that the plaintiff has filed this suit between two private parties and has not made a party to the Government authority i.e. Tahasildar as a defendant.

5. The plaintiff has filed the instant suit for Declaration and permanent injunction against the defendant. It is the general rule that when any person filed any suit to injunction at this stage it is not necessary to see whether the plaintiff has mentioned any vague statement or not or whether he is in possession or not, it will be the matter of evidence, which will be adduced in due course. On bare perusal of pleadings and evidence it shows that the plaintiff is the owner of the plot No.4. He has claim against the defendant and not against the Government authority. Whether the plaintiff is in possession or whether he has right to file a suit for declaration it will be decided as per evidence and the provision of law. According to me it will be not proper to make any comment without recording any evidence so this point at this stage is not be considered. In the said application the defendant has not mentioned how suit is bad for non joinder of State

authority as a party or which pleading and how it is vague. In the present case the plaintiff has with a case that defendant has trying to encroached over his land and disturbing his peaceful possession. Therefore the plaintiff has made proper necessary party to the defendant . Only on the ground that the plaintiff has not made party to the government authority is not the ground to dismiss the suit. with this reason I passed the following order.

**ORDER**

- [i] The application [Exh. 19] is rejected
- [ii] Costs in cause.

Date: 03/07/2023

( M.C. Shaikh )  
Civil Judge Junior Division,  
Kuhi.

CERTIFICATE

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

Name of the Stenographer : Suresh Shankarrao Koramkar.  
Attached to Civil Judge, Jr. Dn.  
Kuhi.

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