

Order below Exh. 29 in R.C.S.No. 75/2021

1. Defendants No. 1 to 3 have filed the present application for rejection of plaint under Order VII rule 11 of the Code of Civil Procedure (Hereinafter referred to as CPC). It is the contention of defendants that the suit is barred by law. Defendants No. 1 to 4 along with other persons had filed an application under Section 5 of the Mamlatdar Court Act bearing Wahiwat Case No. 1019/2000. Tahasildar allowed the said application. The plaintiff then filed RTS appeal against that order before SDO and Additional Collector, Nashik; however he did not succeed in that appeal. The plaintiff has prayed for declaration that the order passed by Tahasildar in above Wahiwat case is illegal. Further, he has prayed for the declaration that the orders passed in subsequent RTS appeals are also illegal. In view of section 4 of Maharashtra Revenue Jurisdiction Act, as well as Section 26 of the Mamlatdar Court Act, present suit is barred by law. Therefore, defendant No. 1 to 3 have filed the present application for rejection of the plaint.
2. By filing his say at Exh. 31, plaintiff denied the contention of defendant No. 1 to 3 *in toto*. Further, he has contended that the application discloses only the half of the truth and the pleadings of the plaintiff itself show that the plaint is not barred by any law. Therefore, he prayed for rejection of the application.

3. Perused the record, application, say and plaint. Heard learned advocates for parties. The learned advocate for defendants argued in consonance with the application. On the other hand, the learned advocate for the plaintiff argued that the want of jurisdiction and being barred by law are two different concepts. The plaint must be looked into while deciding the application. He has also relied on the following Judgments of :

01] Husein Miya Dosumiya Vs. Chandubhai Jethabhai Desai, 1 (1942) 44 Bom.L.R. 577. In this judgment the Hon'ble Court observed the question that, whether affected by order obliged to prefer appeal against such order and injunction by Civil Court went to be issued against orders of Revenue Authorities. In the present case in hand, the issue of injunction and issue of tenant, are not relevant issues. Therefore, with due respect the ratio laid down by the Hon'ble High Court is not helpful to the plaintiff.

02] Abdullamiya Abhulreiman Vs. The Government of Bombay, Bom. L.R. Vol. XLIV. In this judgment, the Hon'ble High Court discussed the Section 11 of The Bombay Revenue Jurisdiction Act. Further the Hon'ble Bombay High Court discussed that when the order is passed without jurisdiction under the Bombay Revenue Jurisdiction Act, then the Indian Limitation Act, is not applicable. Above both issues are not co-related with the case in hand.

03] South Delhi Municipal Corp. & Anr. Vs. M/s. Today Homes and Infrastructure Pvt. Ltd. Etc., SC

Civil Appellate Jur. C A Nos. 6377-6378 of 2019. In this judgment, the Hon'ble Supreme Court laid down the ratio that jurisdiction of Civil Courts cannot be completely taken away inspite of either an express or implied bar. The Civil Court shall have jurisdiction to examine a matter in which there is an allegation of non-compliance of provisions of the statute or any of the fundamental principles of judicial procedure. In the present case in hand, defendants have filed application and contended that there is an express or implied bar under Section 4 of Bombay Revenue Jurisdiction Act and Section 26 of the Mamlatdar Court Act. Therefore, keeping in mind ratio laid down by Hon'ble Supreme Court in above judgment, I am deciding application filed by defendants.

04] State of Gujarat Vs. Shantilal Mangaldas and others, AIR 1969 Supreme Court 634 Civil Appeal No. 1377 of 1968. In this judgment, the Hon'ble Apex Court discussed the law relating to Bombay Town Planning Act and interpretation of statues along with other provisions of Indian Constitution. Therefore, the ratio laid down by Hon'ble Apex Court is not helpful to the plaintiff.

05] Kamala and others Vs. K.T. Eshwara Sa and others, (2008) 12 Supreme Court Case 661 CA No. 3038 of 2008 D: April 29, 2008. In this judgment, the Hon'ble Supreme Court laid down the ratio that, the application filed under O-7, R- 11 of C.P.Code shall be decided only in avernments, made in the plaint. The conclusion that the suit is barred by O-7, R-11 of C.P.Code, has to be drawn from avernments made in the plaint. Therefore, keeping this ratio in mind, while deciding present

application, I am only looking avernments made in the plaint of the plaintiff.

06] Co-Operative Societies Act Vs. Shri. Praveen D. Desai, Bom. High Court Appeal No.75 of 2004. In this judgment, the Hon'ble High Court discussed the provision of Section 9A of Code of Criminal Procedure along with provisions of Limitation Act. Therefore, ratio laid down by Hon'ble High Court is not helpful to the plaintiff.

07] Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, SC 1969 AIR 78, 1968 SCR (3) 662. In this judgment, of Hon'ble Supre Court discussed the provision of Section 17 of Madhya Bharat Sales Tax Act. The defendants are not contended that the present suit is barred by under Section 17 of The Madhya Bharat Sales Tax Act. Therefore, the ratio laid down by Hon'ble Apex Court, is not helpful to the plaintiff.

4. Following are the points arising for my consideration along with my findings and reasons thereon-

Sr. No.	Point	Finding
1	Whether the suit is barred by Section 4 of Bombay Revenue Jurisdiction Act and Section 26 of the Mamlatdar Court Act ?	No
2	What Order ?	Application is rejected.

5. The plaintiff has filed the present suit for declaration and perpetual, mandatory injunction against defendants. The

plaintiff prayed for declaration that the orders passed by Tahasildar, SDO and Additional Collector are without jurisdiction and null and void. Further, he prayed for removal of encroachment from the suit property and perpetual injunction against defendants.

6. The first contention of the defendants is that the suit is barred by second proviso of Section 4 of the Bombay Revenue Jurisdiction Act, 1876. Therefore, I would like to reproduce the Section being relevant as under-

“4. Bar of certain suits.—Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:— (a) claims against the Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. 3 of 1874, or any other law for the time being in force, or of any other village-officer or servant,

or claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by the State Government or any officer duly authorized in that behalf, or xxxxxxxx ”

The perusal of the above provision reveals that the suit to set aside or avoid any order passed under the Bombay Act No. 3 of 1874 or any other law relating to the same subject is barred. The plaintiff and defendants have not filed any application under the Bombay Act i.e. the Maharashtra Hereditary Offices Act. Therefore, there is no

question of setting aside or avoid any order under that act. Further the plaintiff has not alleged that any order is passed under any other law relating to the same subject of law as mentioned in the Bombay Revenue Jurisdiction Act.

7. The plaintiff is praying for declaration that the orders passed by Tahasildar, SDO and Additional Collector under the Mamlatdar Court Act and Maharashtra Land Revenue Code are null and void and passed without jurisdiction. Therefore, it can be concluded that the above provision does not apply to the present situation and the suit is not barred by Section 4 of the Bombay Revenue Jurisdiction Act.

8. The Second contention of the defendants is that the suit is barred by Section 26 of the Mamlatdar Court Act. Here, it would be worthwhile to see what Section 26 of the Mamlatdar Court Act says, “26. **No suit shall lie under this Act-** (a) *against Government or against any Government officer in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guarding duly constituted under any law for the time being in force; or*
(b) *in respect of 41[any removal of any impediment or of] any dispossession, recovery of possession or disturbance or possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of*

Criminal Procedure, 1898.”

The heading of Section itself shows that the suit is barred under that Act only. Therefore, it is necessary to look into the applicability of the said act. The preamble of this Act reveals that Mamlatdar Act is applicable to the officer appointed as Mamlatdar or any Revenue-officer or any officer appointed by the State Government. This Court is a Civil Court and is not appointed under the Mamlatdar Court Act. Therefore, the above section is not applicable for filing of suit before Civil Court and thus the present suit is not barred by Section 26 of the Mamlatdar Court Act.

9. Further, as discussed earlier, the plaintiff has filed the present suit for removal of encroachment from the suit property along with the other reliefs. The grievance of defendant is with regard to the fact that plaintiff has challenged the order passed by Tahasildar, SDO and Additional Collector. It does not pertain to encroachment. The ratio laid down by Hon'ble Supreme Court (supra) held that the part of plaint cannot be rejected. Even if we consider for the sake of convenience that the suit is barred by above provisions, this Court has jurisdiction to deal with the issue of encroachment. Therefore, part of plaint cannot be rejected. Hence, I answer point No. 1 in the negative and pass following order in answer to point No.2.

-: Order :-

1. Application at Exh. 29 is hereby rejected.
2. No order as to cost.

Place :- Kalwan.

Date :- 28/03/2022

(D. M. Gitte)

Civil Judge Junior Division, Kalwan.