


MHNS240001022026 	<b><u>ORDER BELOW EXH. 49 IN RCS No.25/2026</u></b>  <b>Pandharinath Jibhau Bagul</b> <b>Vs.</b> <b>Shivaji Rambhau Bagul &amp; Ors.</b>
---	--

This is the suit for declaration and perpetual injunction. By application filed at Exh.49 vide Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'the Code'*), the defendants prayed to reject the plaint. In the application it is contended that, this Court have no jurisdiction to decide the matter. The plaintiff have sought relief against the defendants by challenging the order of Tahsildar, Deola passed in Occupancy Case No.40 of 2025. The plaintiff have to institute the present suit before the Hon'ble CJSD, Malegaon. Hence, plaint is liable to be rejected vide Order 7 Rule 11 (d) of Civil Procedure Code. Hence, they prayed accordingly.

**02.** By filing say at Exh.54, the plaintiff has strongly contested the application by refuting all adverse allegation against him. He contended that, the suit is instituted for relief of declaration along with relief of perpetual injunction. The objection raised by the defendant to its rejection is not legal. This Court have jurisdiction to decide the matter as per ratio laid down by Hon'ble Bombay High Court in *Vasudev Pandharinath Raikar Vs. Manoj Motiram Dalvi* (2019 [1] ALL MR 52). Hence, they prayed to reject the application.

**03.** Heard, Ld. Advocate for both the sides at length. From the rival contentions made in the application and say and considering the provisions of the law, following points arise before me and I, have recorded my findings thereon for reasons to come which are given as under.

Points for determination		Findings
1.	Is the suit barred by jurisdiction ?	In the negative.
2.	What order ?	Application is rejected.

### REASONS

#### AS TO POINTS NO. 1 & 2 :-

04. In short it is the contention of the defendants that this Court have no jurisdiction to decide the matter as occupancy case No.40 of 2025 is already decided by Tahsildar, Deola.

05. As per Section 9 of the Code of Civil Procedure, the Civil Court shall have jurisdiction to decide all the suits of civil nature, except the suits, the cognizance of which has been barred either expressly or impliedly, by enacting special Acts. That means, when the special statute for dealing with certain subject matters is enacted, wherein the exclusion of jurisdiction of civil Court is stated, it can be observed by plain reading of such barring provision of the said special Act. Here in this matter, the learned advocate for the defendant is claiming that in view of section 26(b) of Mamletdar's Court Act this Court have no jurisdiction decide the suit.

06. So far as barring provision under the special statute in respect of jurisdiction of civil Court is concerned, one must go through Section 26(b) of the Mamletdar Court. which is reproduced hereinafter for quick reference.

#### **Section 26 - Bar of certain suits.— 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 guardian duly constituted under any law for the time being in force; or

(b) in respect of any removal of any impediment or of any dispossession, recovery of possession or disturbance of 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 1 Code of Criminal Procedure, 1898 (V of 1898).

07. On plain reading of the provisions made under the aforesaid Section, it is evident that the said provision in respect of bar of suit against the Government or against any Government Officer. The present suit is not instituted against the Government or Government Official. Hence, there is no express bar to institute suit before this Court. I, have gone through the ratio laid down in the case law cited supra wherein Hon'ble Bombay High Court clearly held that the Civil Court has jurisdiction to entertain, try and decide the suit challenging the order passed unde section 5 of Mamletdar's Court Act. All suits of civil nature unless expressly for impliedly barred can be instituted in the Civil Court in view of Section 9 of the Code of Civil Procedure. Moreover, the orders of Revenue Court passed while exercising original or appellate jurisdiction, are always subject to inherent jurisdiction of the Civil Court. Therefore, in view of Section 9 of Code of Civil Procedure, the order of Tahsildar being passed by a Revenue Officer can always be a subject matter of civil suit before the Civil Court. Therefore, In view of aforesaid discussion as regards point No.01 I, answer it in the Negative and in answer to point No.02 I, proceed to pass following order:-

**ORDER**

- 01] Application at Exh.49 stands rejected.
- 02] Costs in cause.

Date :- 02/02/2026.  
Satana.

(C. U. Shipkule)  
Civil Judge Junior Division, Satana.