

Shital Kadam Vs. Kamalbai Kadam & Ors.

ORDER BELOW EXH.25.

The present application has been filed by defendant Nos. 1 & 2 under Order 7 Rule 11 (d) of Code of Civil Procedure (C.P.C. in short) for rejection of plaint. It is submitted that, by way of present suit, the plaintiff has challenged the order of Tahsildar, Sailu in file No.2023/ROR/कावी dated 20.06.2024. It is further submitted that, the Tahsildar has passed the aforesaid order under Section 5 of Mamlatdar Court Act and no appeal lies against the order of the Mamlatdar Court. Further, this court has no jurisdiction to entertain any suit in which the order of Mamlatdar Court is under challenged. The defendant No.4 was only obeying the orders of his superior officers and he cannot be restrained from doing so. This Court has no jurisdiction to grant any injunction in respect of the order passed by Tahsildar under Mamlatdar Court Act. Hence, the plaint in the present suit is liable to be rejected. For the aforesaid reasons, it is prayed that, the application be allowed.

02. The plaintiff by filling his say on the overleaf of the application submitted that, the suit is instituted for declaration and perpetual injunction. It is submitted that, the alleged order was passed by Tahsildar, Sailu behind the back of the plaintiff. Moreover, the plaintiff has not filed any appeal against the said order but has instituted the present suit to get the relief of declaration that, the said order is void and not binding upon him. This Court has every jurisdiction to entertain the present suit. Hence, it is prayed that, the application be rejected.

03. Heard learned advocates for plaintiff and defendants. In

view of rival contentions of both the parties, following points arise for my determination and I have recorded the findings for each point for the reasons given below.

Sr.No	Points	Findings
1.	Whether the plaint in present suit is liable to be rejected ?	No.
2.	What order?	As per final order.

REASONS

AS TO POINTS NOS. 1 AND 2 :-

04. Before considering the rival contentions of both the parties, it is necessary to examine the provision of Order 7 Rule 11 of C.P.C. Order 7 Rule 11 of C.P.C provides for-

Rejection of plaint- The plaint shall be rejected in the following cases-

- a) Where it does not disclose a cause of action.*
- b) Where the relief claimed is under- valued and the plaintiff on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so,*
- d) Where the suit appears from the statement in the plaint to be barred by any law.*
- e) Where it is not filed in duplicate.*
- f) Where the plaintiff fails to comply with the provisions of rule 9.*

Provided that, the time fixed by the court for the correction of

the valuation or supplying of the requisite stamp papers shall not be extended unless the court for reasons to be recorded is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers as the case may be within the time fixed by the court and that refusal to extend such time would cause injustice to the plaintiff.

05. It is well settled that, while considering the application under Order 7 Rule 11 of C.P.C court has to examine only the contentions mentioned in the plaint. On that premise, if we proceed to examine the plaint in the present suit, it reveals that, the plaintiff has instituted the present suit for declaration and perpetual injunction. It is specific contention of the plaintiffs that, they are the owner and possessor of 1 H 30 R and 1 H 35 R land in gut No.515 situated at mauje Devulgaon Gath. To the Northern side of the suit property lies the land of defendants in gut No.520, 519 & 516. For going into the lands of defendants there is a pandan road from the Eastern side in North-South direction. However, the defendants are trying to create new road from the common embankment of gut No.515 & 520. Accordingly, the defendants filed an application before Tahsildar, Sailu and the Tahsildar, Sailu behind the back of the plaintiffs passed an order granting the road from common embankment of gut No. 520 & 515 to the defendants.

06. Further, it is contended in the plaint that, the said order of Tahsildar, Sailu is illegal and against the principles of natural justice. The defendants now by creating new road from the common embankment of gut no. 520 & 515 are obstructing the possession of the

plaintiffs. Further, defendant No.4 is trying to implement the illegal order passed by Tahsildar, Sailu.

07. From the contention of the plaint, it appears that, the plaintiffs have challenged the order passed by Tahsildar on the ground that, it was passed behind their back and is illegal. On the other hand, according to the defendants, civil Court has no jurisdiction to entertain any suit in which the order of Tahsildar has been challenged. In other words, according to the defendants if the Tahsildar has passed any order under Mamlatdar Court Act, then this Court has no jurisdiction to entertain any suit against such order. What is pertinent to note that, if any Act exclusively bars the civil Court from entertaining any suit or takes away the jurisdiction of civil Court then certainly there must be an express provision to that effect. If we examine the scheme of Mamlatdar Court Act, then it appears that, it contains 10 sections and none of those sections prescribe any provision to the effect of taking away the jurisdiction of the civil Court. There is no provision in the Mamlatdar Court Act which bars this Court from entertaining any suit against the order passed by the revenue authority under that Act.

08. In order to attract the provision of Order 7 Rule 11(d) of CPC, there must be an express provision in the Act which exclusively bars the civil Court from taking cognizance of the matter. As discussed above, the Mamlatdar Court Act does not contain any such provision. Hence, in my opinion, from the plaint, the present suit does not appear to be barred by the provisions of Mamlatdar Court Act. This Court has jurisdiction to entertain the present suit. In the light of above discussion I proceed to pass following order.

ORDER

Application (Exh. 25) is hereby rejected.

Date : 24.02.2025

Place : Sailu

(Mandar M. Raut)
Civil Judge Jr. Division,
Sailu Dist. Parbhani.