


MHPU240015902025 	R.C.S No.229/2025 Lata Vs. Mangesh
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:: ORDER BELOW EXH.13 ::

This application is filed by defendant no.1 under Section Order 7 Rule 11 of Code of Civil Procedure 1908 (for short 'C.P.C').

DEFENDANT'S CONTENTION

2. It is contention of defendant no. 1 that, there is matter adjudicated before the Mamalatdar Court regarding same suit property. Parties are same. Hence, the suit is barred by principle of res-judicata. This Court has no jurisdiction as said issue comes within ambit of Mamalatdar's Court. Hence, prayed rejection of plaint.

PLAINTIFF'S CONTENTION

3. Plaintiffs have filed say vide Exh. 16 and opposed to the application. They have contended that, the suit property in present matter was not subject in proceeding before Mamalatdar's Court. Some of plaintiffs were not party in that proceeding. Therefore, there is no bar of res-judicata to this suit. Application is false. Hence, they have prayed to reject the application.

ARGUMENTS

4. Heard, Ld. Advocate for both the parties. They have argued in line of their contention. Ld. Advocate of plaintiffs has referred a case in **Vasudev Pandharinath Raykar Vs. Manoj Mohan Dalvi, 2019(1) All MR** and submitted that, this Court has jurisdiction to try this suit and there is no bar of res-judicata. On the contrary Ld. Advocate for defendant no. 1 has referred a case in i) **T. Arivandandam Vs. T. V. Satyapal & Another, 1977 AIR 2421** ii) **K. K. Modi Vs. K. N. Modi & Ors., AIR 1998 Supreme Court 1297.** In both of these cases it is held

that, *'frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power of stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding'*.

POINTS

5. Therefore, following points arose for determination upon which findings are recorded for reasons given below :

Sr.No.	Points	Findings
1.	Is the suit barred by principle of res-judicata?	No.
2.	Is the suit barred by any law ?	No.
3.	Is plaint liable to be rejected ?	No.
4.	What order ?	Application rejected.

:: REASONING ::

Relevant provisions of law

6. As there is rival submissions and contention regarding bar of jurisdiction as well as application of principle of res-judicata, it will be appropriate to mention relevant provisions in law.

7. Order VII rule 11 of C.P.C. provides for rejection of plaint on various grounds. Sub rule (d) of it provides that, where the suit appears from the statement in the plaint to be barred by any law, the plaint shall be rejected. Such bar is in dispute in this case under section 11 of C.P.C. as well as provisions under Mamalatdar's Court Act. For application of principle of res-judicata under section 11 of C.P.C. an issue in present

matter should be directly and substantially an issue in former suit as well as parties should be same in both the suits.

Res-judicata

As to point No.1 :-

8. It is well settled principle of law that, while considering application under Order VII Rule 11 of C.P.C. only plaint can be read and not written statement or evidence on record.

9. As regard to bar of principle of res-judicata, it may be noted that, admittedly, case before Mamalatdar's Court had been filed by defendants for removing obstruction on road. Copy of judgment of Mamalatdar's Court has been filed along with Exh.03. It shows that, some of plaintiffs are not parties to that proceeding and suit property in present suit was not property in subject in that proceeding. Issues directly and substantially involved in present suit are different than issues directly and substantially involved in that proceeding before Mamalatdar's Court. As such principle of res-judicata is not applicable. Hence, point No.1 is answered as 'No'.

Bar of Jurisdiction

As to point No.2 :

10. As per section 9 of C.P.C. this Court has jurisdiction to try all suits of civil nature except suits of which there cognizance either expressly or impliedly barred. As per submission of Ld. Advocate for defendant no. 1, this Court has no jurisdiction to entertain the suit challenging order of Mamalatdar's Court. In that regard, Ld. Advocate for plaintiffs has referred afore mentioned case in **Vasudev**. In this case law, it is held that, "*admittedly, the respondents are not challenging the order of the Mamlatdar or the Sub-Divisional Officer. They have filed the Suit simplicitor for injunction, restraining the Petitioners from causing obstruction to their possession in the suit lands and from using the alleged road for their access. Even assuming that they are challenging the said orders indirectly, considering the legal position, which is no*

more res integra, the Civil Court has jurisdiction to entertain, try and decide the Suit challenging the order passed under Section 5 of the Mamlatdar's Courts Act."

11. In said case the case of **Mohammad Rahim Khan Vs. Shankar Maruti Dhage and Anr., 2017(3) Bom.C.R. 472** has been referred. In case of **Mohammad Rahim Khan** also it is held that, "The Proviso below sub-section (1) of Section 5 empowers Mamlatdar's Courts to refuse to exercise the power under the said provision, if it appears to him that such a case can be more suitably dealt with by the Civil Court. Though there is a revision provided under Section 23 of the said Act, to challenge the order passed by the Mamlatdar under Section 5, but the Act of 1906 nowhere attaches finality, either to the order passed under Section 5 by Mamlatdar on merits or to the order passed in Revision under Section 23 of the said Act. In the absence of such finality being attached to the order passed under the Act, the jurisdiction of the Civil Court cannot be held to be impliedly barred, merely because the Act provides a separate machinery for getting the grievance redressed. The ouster of plenary jurisdiction of Civil Court cannot be readily inferred and such jurisdiction remains in-tact and available to be exercised either against the order under Section 5 or against the order of revision under Section 23 of the said Act."

12. If these legal position considered with case-on-hand it may be noted that, order of Mamlatdar has not finality and this Court has jurisdiction to entertain the present suit. As the plaintiff are seeking injunction on the basis of title over suit property against defendants, admittedly, who are not owner of suit property, it cannot be said groundless suit, as appears from face of record. Therefore, facts aforementioned case laws in **T. Arivandandam** and **K. K. Modi** are distinguishable and not useful to defendant no. 1. There is no express or implied bar to try the suit. Hence, point No.2 is answered as 'No'.

Conclusion**As to point No.3 and 4:**

13. Considering all these matter, it may be concluded that, there is no bar to entertain the present suit. Therefore, plaint is not liable to be rejected. In result application deserves to be rejected. Hence, point No.3 is answered as 'No' and in answer to point no. 4, following order is passed-

An application is rejected with costs.

(Avinash M. Patil)

Date : 23.01.2026

Civil Judge, Jr.Divn.,Ghodegaon

CERTIFICATE

I affirm that the contents of this PDF file order are same word for word as per original order.

Name of Steno : Gaurav A. Bobade.
Name of Court : Shri. Avinash M. Patil.
Civil Judge Junior Division,
Ghodegaon.
Dictated and typed on : 23.01.2026.
Corrected on : 23.01.2026.
Signed on : 23.01.2026.