



Malu Ghasha Shid

Vs. Katalwadi-Ekalghar-Kondgaon Gramastha

Through Yaswant Tanya Bhasma

ORDER BELOW EXH. 18
(Passed on 12th day of April, 2023)

By this application, defendant seeking rejection of the plaint vide Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 on the ground that suit for declaration that the order dated 28/03/2022 under Section 5 of the Mamlatdar's Courts Act, 1906 directing plaintiff to remove impediment created in right of way is without jurisdiction, null and void is barred by law.

2. Plaintiff resisted application by filing say at Ex. 23. It is contended that suit is for declaration that the order passed by the Mamlatdar under Section 5 of the Mamlatdar's Courts Act, 1906 is without jurisdiction, null, void and perpetual injunction. Therefore, the jurisdiction of this Court is not ousted.

3. Plaintiff submitted that, the present defendant had put grievance under section 133 of the Code of Criminal Procedure 1973 in writing to the Tahsildar, Roha stating that plaintiff has caused obstruction his right of way which passes through his land. However, the Tahsildar passed the order dated 28/03/2022 under Section 5 of the Mamlatdar's Court Act directing plaintiff to remove obstruction in right of way. It is alleged that, in that order the concern court has not mentioned from which

Gat NO. the road has been passed. Which obstruction should be removed by the plaintiff. The order passed by the Tahsildar is without merits and illegal. The defendant is not having any road from the suit property of the plaintiff. Therefore, plaintiff has filed this suit for declaration of the said order as null & void and perpetual injunction.

4. Heard both sides. Perused the relevant record.

5. Shri. Hemant Wagh, the learned advocate appearing for defendant submitted that this court is not having the jurisdiction to decide the issue raised by the plaintiff. The suit is barred by section 26 of the Mamlatdar Court Act. The jurisdiction of the Civil Court is impliedly barred because Mamlatdar's Court Act provides a separate machinery for getting the grievance redressed. Therefore, plaint be rejected under Order 7 Rule 11(d) of the CPC.

6. Shri. Verma, learned advocate for plaintiff referred judgment of Hon'ble Bombay High Court in ***Mohammad Khan Rahim Khan Vs. Shankar Maruti Dhage and Ors***, dated 08/03/2017 in order to submit that Civil Court has jurisdiction to entertain, try and decide the suit challenging the order passed under Section 5 or under Section 23 of Mamlatdar's Courts Act. It is submitted that nonjoinder of party is not ground to reject the plaint. The suit is thus, maintainable.

7. I have carefully examined the submissions made.

8. Before proceeding further, it would be worth to note that in judgments cited Hon'ble Bombay High Court after considering the provisions of the Mamlatdar's Courts Act have expressly observed that

though there is a revision provided under Section 23 of the said act to challenge the order passed by the Mamlatdar under Section 5, the Act nowhere attaches finality either to the order passed under Section 5 of the 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 hold to be impliedly barred because the Act provides a separate machinery for getting the grievance redressed. The ouster of the plenary jurisdiction of Civil Court can not readily interfered and such jurisdiction remains intact and available to be exercise either against the order under Section 5 or against order of revision under Section 23 of the said Act.

9. Perusal of plaint shows that, defendant had put grievance in writing to the Tahsildar, Roha stating that plaintiff had obstructed right of way passing through his land. However, the Tahsildar passed the order dated 28/03/2022 under Section 5 of the Mamlatdar's Court Act directing plaintiff to remove obstruction in right of way without following the fundamental principle of judicial procedure.

10. It is clear that the jurisdiction of Civil Court is only ousted in respect of valid order by the Mamlatdar. In this suit, plaintiff is seeking declaration that the order of Mamlatdar being without merits and illegal and perpetual injunction. In short, the order is challenged on the ground of nullity. The learned advocate appearing for defendant could not bring to my notice any express provision creating bar of jurisdiction of the Civil Court to entertain, try and decide the suit challenging either the order

passed under Section 5 or under Section 26 of the Mamlatdar's Courts Act. Therefore, suit is not barred by law.

11. Considering the averments in the plaint and the bundle of facts stated in the plaint, I am of the opinion that Civil Court has jurisdiction to entertain suit challenging the order passed by the Mamlatdar. Application is therefore, liable to be rejected. Hence, pass following order:

: O R D E R :

1. Application is rejected.
2. Costs in cause.

Date: 12.04.2023

Place: Roha

(Smt.M.C.Hasge)
Joint Civil Judge Junior Division
Roha Dist.Raigad