

**ORDER BELOW EXH – 17 IN RCS No. 79/2025**

The present application has been filed by the defendant no. 1, 2, 3/3 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*herein after called as CPC for the sake of brevity*) for rejection of plaint.

2. The defendants contend that the present suit pertains to a declaration regarding the decision given by the Tahsildar, Kavthemahankal. However, the plaintiff has not included the Tahsildar as a party to this suit. Apart from this, the suit concerns the decision given by the Tahsildar, as per Section 5 of Mamlatdar's Court Act. As per Section 26 of Mamlatdar's Court Act, jurisdiction of the Civil Court is barred in respect of decision of the Mamlatdar. Therefore, suit is barred by Section 26 of the said Act. Hence, prayed for rejection of the plaint.

3. The plaintiff submitted his say and denied the claims made in the application. He states that he filed this suit challenging the decision of the Mamlatdar. According to him, the Civil Court has jurisdiction to hear cases against the Mamlatdar's decisions, for examining whether those decisions are legal and correct. The current application is an attempt to delay the progress of the suit. The plaintiff also cited decision of the Hon'ble Bombay High Court in support. Lastly, he requested that the application be rejected.

4. I have perused the record. It is admitted position on record that the present suit is filed for declaration of decision dated 27.09.2023 of Tahsildar, Kavathe Mahankal in No. Land/Road/44/2017 is illegal and not binding on the plaintiff. By way of present suit, the plaintiff contended that he is owner and possessor of land Gat No. 816 ad-measuring 1 H 57 R situated at Kuchi village, Tal- Kavathe Mahankal. The said property inherited by him after his fathers death. Accordingly, he has been in possession of the suit property. On 16.08.2017, defendant no. 1 to 3 had initiated proceeding bearing No. Land/Road/44/2017, before Tahsildar, Kavathe Mahankal, as per Section 5 of the Mamlatdar's Court Act, for opening road to access Gat No. 837 and 839 from Gat No. 815, 816, 825, 826, 841, 840, 842. During the pendency of the said proceeding father of the plaintiff namely Bhagwan Aakaram Patil died in the year 2019. Though the defendants did not brought his legal heirs on record in the said proceeding. Thereafter, on 03.12.2018 without hearing the legal heirs of deceased Bhagwan i.e. plaintiff, the said application came to be allowed by the Tahsildar. Thereafter, the plaintiff filed revision before Sub Divisional Magistrate, Miraj. The said revision application was allowed and case was remanded back to the Tahsildar, Kavathe Mahankal for re-inquiry. However, without making any inquiry on 27.09.2023, Tahsildar, Kavathe Mahankal rejected the said application. Thereafter, the plaintiff again filed revision application no. 560/2023, for challenging the order of the Tahsildar, before Sub Divisional Magistrate, Miraj, where the Sub Divisional Magistrate stayed the

proceeding before the Tahsildar. Thereafter, on 13.03.2025 in re-inquiry application no. 57/2025, Tahsildar issued notice of appearance on 24.03.2025. On fixed date, a remark of taking legal heirs on record has been mentioned by the Tahsildar and on 28.04.2025 matter was fixed for further hearing. However, on 29.04.2025, the said proceeding was closed without taking Lrs on record and accordingly informed to the plaintiff.

5. According to the pleading of the plaintiff, the proceeding conducted before the Revenue Officer has not followed principles of natural justice. They have not allowed the plaintiff for submitting his say without making necessary inquiry. They have closed the proceeding without taking him on record, which caused injustice to the plaintiff. Hence, by way of this suit, the plaintiff prayed that decision dated 03.12.2018 from proceeding no. Land/Road/44/2017 of Tahsildar, Kavathe Mahankal is illegal and not binding on the plaintiffs. Therefore, he prayed for restraining defendants from creating road from Gat No. 816 as per order of the Tahsildar. Defendants appeared, however they did not file their written statement.

6. Considering the contentions of both sides, documents on record and arguments advanced by learned advocates for both sides, following points arise for determination and my findings against each of them for the reasons given below :

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the plaint is liable to be rejected under Order VII Rule 11 (a) and (d) of CPC ?	... NO
2.	What Order ?	Application is rejected.

REASONS

07. Perused the record. Heard the Ld. Advocates for both at length.

08. In support of contentions, the plaintiff has relied on the following cited ruling.

a) Mohommad Khan Vs. Shankar reported in 2017 (3) Mh.L.J

b) VISHWANATH S/o RAMBHAJI BHALERAO & Anr. Vs. USHA w/o PRALHAD KASBE reported in 2011 (1) Mh. L.J

c) Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole & Ors reported in 2019 CJ (Bom) 7

POINT NO. 1 :-

09. The plaintiff filed copy of decision from proceeding no. Land/Road/SR/44/2017. Upon perusal of the same, it appears that

Bhagwan Aakaram Patil (Deceased) i.e. father of plaintiff was opponent no. 2 in the said proceeding. However, he has shown as **died**.

10. The defendants further objection is that the plaintiff has not added Tahsildar as a party in the present suit, whereby he challenged the decision of the Tahsildar. Therefore, suit is not maintainable. However, it is important to note that while deciding application under Order 7 Rule 11 of CPC, it is necessary to see contents from the plaint. Further, as per Order 1 Rule 9 no suit shall be defeated by reason of the mis-joinder or non-joinder of the parties. Thus, the said fact regarding non-joinder will be decided at later stage. At this stage, the plaint cannot be rejected mere ground of non-joinder of necessary party. Hence, there is no substance in the contention of the defendants.

11. The plaintiff has relied on the decision of Hon'ble Bombay High Court in *Mohammad Khan Vs. Shankar reported in 2017 (3) Mh.L.J* where it is observed that the proviso Sub-section 1 of of Section 5 of the Mamlatdar's Court Act empowers the Mamlatdar 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 revision provided under Section 23 of the said Act to challenge the order passed by the Mamlatdar under Section 5, the Act no where attaches finality either to the order passed under Section 5 by 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 grievances redressed. The ouster of plenary jurisdiction of the Civil Court cannot be readily interfered and such jurisdiction remains intact and available to be exercised either against the order under Section 5 or against the order of revision under Section 23 of the Act. Accordingly, it is held that Civil Court has jurisdiction to entertain, try and decide the suit challenging the order of Mamlatdar.

12. Further, Ld. adv for the plaintiff relied upon the decision of Hon'ble Bombay High Court from ***VISHWANATH S/o RAMBHAJI BHALERAO & Anr. Vs. USHA w/o PRALHAD KASBE reported in 2011 (1) Mh. L.J*** . In the said decision it is observed that, the bar of jurisdiction of Mamlatdar Court under Section 26 (b) operates only when it is pointed out that Civil suit was filed prior to institution or proceeding under Section 5 of the Act. In view of the aforesaid position of law, the only possible view is that the order passed under the Mamlatdar's Court Act would be subject to the decision of Regular Civil Suit. In the present suit, there is no civil suit filed prior to filing of application under Section 5 of the Act. Hence, observations from the above decision squarely applicable to the present **case**.

13. Apart from this The Mamlatdar's Courts Act provides summary remedy therefore, as per Section 9 of the Code of the Civil procedure, Civil Court has jurisdiction to check correctness of the decision. Therefore, taking into consideration all the above facts, it can be said that the present suit against defendants is maintainable before this Court as this Court has jurisdiction to try and decide the present

suit. The suit of the plaintiff is not barred under Section 26 of Mamlatdar's Court Act. Therefore, plaint cannot be rejected. Hence, in view of above facts, I answer point no. 1 in negative.

POINT NO. 2 :-

14. In view of discussion as to point no. 1, I pass the following order.

O R D E R

Application is rejected with costs.

Date :- 16/09/2025
Place :- Kavathe Mahankal

(M.A.Kulkarni)
Jt. Civil Judge Junior Division,
Kavathe Mahankal

Certificate

I affirm that the contents of this P. D.F. file order are same,
word to word, as per the original order.

Name of the Stenographer	- J. A. Salunkhe
Court	- Jt.CJJD and JMFC, Kavathemahankal.
Date	-16.09.2025
Order signed by the	
Presiding Officer on	-16.09.2025
Order uploaded on	-16.09.2025