

**ORDER BELOW EXH.15**

This is an application filed by defendant under section 9 A of the Code of Civil Procedure.

2. Defendant has contended that, plaintiff has sought relief against the order passed by the Tahasildar under the Mamletdar's Court Act. It is further contended by the defendant that, as Tahasildar has exercise powers under Section 5 (2), jurisdiction of Civil Court is ousted. Hence, it is prayed by the defendant that, issue about jurisdiction is to be framed and it be decided as preliminary issue.

3. Plaintiff filed his say below same application. Plaintiff contended that, Civil Court has jurisdiction to adjudicate the issue. Civil Court can inquire and adjudicate the matter and there is no bar of Mamletdar's Court Act. Hence it is contended by the plaintiff that application be rejected.

4. My Ld. Predecessor has framed following issue and I have recorded my finding thereon with the reasons stated thereon.

Sr.No.	Point for determination	Finding
1.	Whether this court has jurisdiction to try this suit ?	In the affirmative
2.	What order ?	As per final order

REASONS

As to point No.1:

5. Shri. V.H.Hardikar, Advocate for defendants submitted that, plaintiff has sought relief of declaration against the order passed by Tahasildar under Mamletdar's Court Act. Shri.Hardikar further submitted that, in view of relief mentioned in para 11(b) of plaint, Civil Court has no jurisdiction to entertain and decide this suit in view of bar under section 26 of Mamletdar's Court Act. Hence Shri.Hardikar submitted that, his application be allowed.

6. Shri.S.M.Handral, Advocate for plaintiff submitted that civil court has jurisdiction to entertain and decided this suit. In support of his submission Shri.Handral has relied on the case of Rajendra Sheshrao Shendge Vs.Smt.Shobhatai S.Ravate and Anr. reported in 2007 (2) AIR Bom.R.588. Considering the ratio laid down in above case Shri.Handral submitted that application of defendant be rejected.

7. For the purpose of determining the jurisdiction of the court, it is necessary to see the plaint itself. Plaintiff has filed this suit for declaration and perpetual injunction. It is pleaded in para no.6 that order passed by Tahasildar is void, illegal and not binding on plaintiff. In para no.11 (b) plaintiff sought relief that it is to be declared and decreed that order passed by Tahasildar dated 24.12.2012 is null and void. I have carefully gone through Rajendra's case (cited supra), wherein Hon'ble Bombay High Court, Nagpur Bench has observed and held that,

*“ It is seen that there is no express bar of suit. According to Mr. Bhattad, bar is implied. There is no room left by virtue of totality of provisions and*

*scheme as to how implied bar should be inferred. Argument of learned Advocate Mr. Bhattad that implied bar can be read from the provision to Clause (b) of Subsection (1) of [Section 5](#) amounts to reading in a provision of legislation, such words and such scheme which is totally non-existent.*

*13. The Court cannot forget the wide compass of Section 9 of Civil Procedure Code. Exclusion and bar of jurisdiction cannot be read or inferred just for the sake of asking in the manner in which present petitioner wants. Existence of jurisdiction has to be presumed and not the bar”*

8. No doubt facts of Rajendar's case (cited supra) and matter before me are different. But principle of law emerged from above case is applicable to present matter. Therefore, in view of ratio laid down in Rajendra's case (cited supra), it is crystal clear that, there is no express bar thereby debarring the jurisdiction of civil court. Considering above fact, I am of the opinion that relief of declaration is within the purview of civil court & for that purpose jurisdiction of civil court is not ousted. Hence bar u/s.26 of the act is not at all attracted. Hence I answer point no.1 in the affirmative.

As to point No.2:

9. Considering above discussion, I am of the opinion that civil court has jurisdiction to entertain & decide above dispute. Hence I proceed to pass the following order.

ORDER

- 1) Application stands rejected.
- 2) Cost of this application is on the defendant.

Akkalkot  
Date :- 10.03.2016

( G.S.Diwan )  
Jt. Civil Judge Jr. Dn.,  
Akkalkot

CERTIFICATE

I affirm that the contents of this PDF file Order /Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer : R.M.Shirke  
Court : Jt.Civil Judge & Judicial Magistrate  
F.C., Akkalkot.  
Date : 10/03/2016  
Judgment /order signed by  
the Presiding Officer on : 10/03/2016  
Judgment / order uploaded  
on : 10/03/2016