

MHST130003372026 	<u>RCS 66/2026</u> Shubham Shivaji Salunkhe Vs Dayanand Anandrao Rakate <u>ORDER BELOW EXH.21</u>
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The present application is filed by defendant under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'C.P.C.').

CONTENTS OF THE APPLICATION IN BRIEF:

2. In the present suit plaintiff is challenging the order dated 23/04/2025 passed by Tahsildar, Patan in case no. work/no.143 S.R. 21/2022. As plaintiff is challenging the order of Tahsildar, he must be implead as a party, however, Tahsildar is not made so in the suit and therefore, the suit is not maintainable. In plaint it is specifically stated that, the cause of action arose when the notice was sent by Mandal Adhikari. There are no recitals of cause of action against the defendant and unnecessarily he is made a party. When cause of action is against any Government Authority, the suit should have been instituted in the Court of Civil Judge, Senior Division and therefore this Court has no jurisdiction.

CONTENTS OF THE SAY IN BRIEF:

3. The application is false and frivolous. As per section 143(4) of the Maharashtra Land Revenue Code this court has jurisdiction.

The plaintiff is challenging the order passed by Tahsildar and not the Tahsildar.

4. Perused application and say. Heard Ld. Advocates for plaintiff and defendant. Perused plaint and documents annexed with it. Following points arise for my determination.

Sr.No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the plaint is liable to be rejected vide Order VII Rule 11 of the Code of Civil Procedure, 1908 ?	No.
2.	What order ?	As per order

REASONS

5. When an application under Order VII Rule 11 is filed, it is settled rule that, only plaint must be considered and there is no relevance of defence of defendant. Moreover, defendant must satisfy that, the case comes up under any of the sub clauses given under Rule 11 of Order VII of C.P.C. Through this application, primarily defendant has taken an objection regarding cause of action and jurisdiction of Court.

6. Plaintiff alleges that property situated at Mouje Majgaon, Tal. Patan, Dist. Satara bearing Gat No. 93 having total admeasuring area of 1H 71R (hereinafter referred to as 'suit property') is the ancestral property of defendant and himself. Plaintiffs family is owner of land admeasuring 87R and

defendants family is owner of area admeasuring 87R of the suit property.

7. On bare perusal of plaint it transpires that plaintiff and defendant are co-owner of Gat No. 93 as no partition has taken place, as per the recitals in plaint. It is settled position that, while evaluating an application under O. VII R. 11 of CPC, court looks strictly at the statements made in plaint and must assume everything written in it as true.

8. Defendant contends that the Plaintiff fails to disclose a triable cause of action under Order VII Rule 11(a) of the CPC. However, a meaningful reading of the plaint reveals that the Plaintiff explicitly challenges the structural legality of the order dated 23/04/2025 passed by Tahsildar, Patan in case no. work/no.143 S.R. 21/2022., under Section 143 of the Maharashtra Land Revenue Code (MLRC),1966. The statutory boundary of the Tahsildar's jurisdiction under Section 143(1) is restricted solely to evaluating or granting a right of way 'over the boundaries' of survey numbers. The Plaintiff contains specific averments that the impugned order carves a fresh path slicing directly through the middle of the Plaintiff's active cultivation area rather than adhering to external bounds. Plaintiff has challenged the said order and the cause of action is shown to be arisen by the notice which was sent by Circle Officer in view of the said order. Defendant is benefited by the said order and legal right of plaintiff is seen to be violated. Therefore, the plaint clearly present a triable

civil dispute and a valid cause of action that cannot be summarily choked at the threshold.

9. Learned Advocate for defendant strongly argued that, as per Section 143 of the Maharashtra Land Revenue Code, the present suit is barred. Further he argued that as per the Maharashtra Revenue Jurisdiction Act, this Court has no jurisdiction.

10. Plaintiff alleges that, as per section 143 the Maharashtra Land Revenue Code, Tahsildar has power to provide access to land owners between different survey numbers and it does not empowers any authority to carve out a road within a single survey number, shared by co-sharers. Moreover, it is alleged that, no formal partition has taken place between the parties. As per Section 143(4) of M.L.R.C, any person who is aggrieved by the decision of Tahsildar under this section may, within year from the date of the decision, institute a civil suit. The impugned order of Tahsildar is dated 28/04/2025, while the present suit is filed on 16/04/2026 i.e. within the period of one year. Section 143 of M.L.R.C. specifically states that, if the person chooses to file a civil suit he shall not have a remedy to file appeal of revision against such order. Thus, it is clear that the person has two options i.e. either to file a civil suit or to prefer an appeal or revision. Plaintiff has chosen to file a civil suit against order of Tahsildar.

11. Learned Advocate for defendant argued that, as per Section 11 of Maharashtra Revenue Jurisdiction Act court has no jurisdiction and also that the suit against Government shall be filed

before the Court of Civil Judge, Senior Division. Per contra, Learned Advocate for plaintiff argued that, Maharashtra Land Revenue Code being the special enactment, it prevails over the general law and this court has jurisdiction. On minute perusal on plaint it is clear that, plaintiff has challenged the order of Tahsildar and has no claim or grievance against Tahsildar personally. Furthermore, due to the said order, defendant has obtained a right to way which means that he is benefited by the said order. As defendant is benefited by the order of Tahsildar, plaintiff has made him a party. The plaintiff specifically alleges that, defendant used political influence to obtain the said order and he was not given a proper hearing.

12. Further, section 11 of the Maharashtra Revenue Jurisdiction Act explicitly opens with the restrictive phrase, '*Except as otherwise expressly provided in the Maharashtra Land Revenue Code, 1966...*', Section 143(4) of the MLRC consciously carves out one such express exception, creating an absolute right for an aggrieved individual to institute a civil suit to modify or set aside a Tahsildar's right of way decision. Consequently, by operation of Section 143(4) read with Section 143(5) of the MLRC, the legislative bar requiring the exhaustion of administrative remedies is wholly inapplicable to the present suit. The Plaintiff is well within their statutory rights to bypass the revenue hierarchy and seek a civil declaration directly from this Court. Thus, considering the above discussion point no 1 is answered in negative and in answer to point no. 2 following order is passed.

Order

1. Application is rejected.
2. No order as to costs.

Patan.

Date : 25.06.2026.

(Isha Ghatge)

Jt. Civil Judge Junior Division,
Patan, District Satara.