

R.C.S. No. 158/2020
Kailash Vrs. Tulshidas & others.
CNR No. MHWS02000561-2020

Order Below Exh. 18.

This is an application preferred by defendant No. 1 under Section 10 of the Code of Civil Procedure for stay of the suit.

2] Plaintiff has resisted the application by filing reply below the application.

3] Heard Adv. Shri. Nene for defendant No. 1.

4] Heard Adv. Shri. Poddar for plaintiff.

5] Adv. Shri. Nene argued that a proceeding under Section 5 of the Mamlatdar Courts Act filed by this defendant against plaintiff is pending before Mamlatdar. Hence, it is necessary to stay the present suit. Adv. Shri. Poddar argued that the nature of both the proceedings are totally different. Moreover, the reliefs claimed in both the matters and parties are not similar.

6] I have perused the documents on record. It is clear from the perusal of the same that defendant Nos. 2 to 4 are not parties to the application under Section 5 of Mamlatdar Courts Act. Pertinently, the issues which are directly and substantially for consideration in the alleged application under Section 5 of the said Act and in the present suit are also different. The proceedings under Section 5 of Mamlatdar Courts Act is for removal obstruction over the easementary way, which

jurisdiction vests with the Mamlatdar. However, the present suit is for declaration, which jurisdiction exclusively vests with the Civil Court.

7] The Hon'ble Apex Court in case of **National Institute of Mental Health .. Vrs. .. C. Parmeshwara**, reported in AIR 2005 S.C. 242, which is relied on by the plaintiff held that, *'the language of Sec.10 of C.P.C. suggests that it is referable to a suit instituted in the Civil Court and it cannot apply to proceedings of other nature instituted under any other statute.'* In this context, I would like to mention that even a decision under Section 5 of the said Act does not operate as res-judicata to the present suit for declaration.

8] In a judgment of Hon'ble Bombay High Court, reported in 2007(2) ALL MR 599 in case of **Shri. Rajendra .. Vrs. .. Smt. Shobhatai**, which is relied on by the plaintiff, it is held that *'Mamlatdars' Courts Act presupposes and recognizes existence and continuation of powers and jurisdiction of Civil Court. The scheme provides for a summary jurisdiction and powers and bar of suit to make order of Mamlatdars or Collector etc., to be immune from scrutiny in a Civil Suit.*

9] Plaintiff also relied upon the ruling of Hon'ble Bombay High Court, in case of **Vasudev & Ors. .. Vrs. .. Manoj Mohan Dalvi & Ors**, reported in 2019(1) ALL MR 52, wherein it is held that, *'to operate any order as res-judicata parties to both the proceedings must be same.* It is already stated that defendant Nos. 2 to 4 are not parties to the proceedings under Section 5 of the said Act before Mamlatdar.

10] The ratio laid-down in afore-stated rulings supports the argument of plaintiff's advocate. The important and crucial condition laid down in Section 10 of Civil Procedure Code are not fulfilled. Hence, application being liable to be rejected, the following order.

ORDER

Application is rejected.

Date:- 14/01/2021.

Jt. Civil Judge (S.D.), Washim.

CERTIFICATE

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

- 1) Name of Stenographer :- D. V. Daware, Clerk-Cum-Stenographer
- 2) Name of Court :- Jt. Civil Judge (S.D.), Washim.
- 3) Date of order :- 14.01.2021
- 4) Order signed by the :- 14.01.2021
presiding officer on
- 5) Order uploaded on :- 16.01.2021