

**ORDER BELOW EXH. No.12 in RCS No. 29/2026**

(Shivchand Uttam Rathod and another Vs.

Kashinath Maroti Mahalle)

1. Present application below Exh.12 is filed by the defendant under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 seeking rejection of plaint.
2. The defendant contended that the present suit is not maintainable in view of Sections 23 and 26 of the Mamlatdars' Courts Act, 1906. It is submitted that the plaintiffs had challenged the order passed by the Tahsildar/Mamlatdar under Section 5 of the Mamlatdars' Courts Act before the Sub-Divisional Officer by filing revision application under Section 23 of the Act and thereafter withdrew the same without liberty to file fresh proceedings. According to defendant, the plaintiffs are estopped from filing the present suit. It is further contended that Civil Court has no jurisdiction to entertain the suit in view of bar under Section 26 of the Mamlatdars' Courts Act. It is also contended that the Tahsildar/Mamlatdar and S.D.O. are necessary parties and in absence of said authorities the suit is not maintainable. Hence, rejection of plaint is sought under Order VII Rule 11(a) and (d) of Civil Procedure Code.
3. The plaintiffs opposed the application by filing say. It is contended that proceedings under the Mamlatdars' Courts Act are summary and temporary in nature and Civil Court jurisdiction is not barred. It is further contended that the Mamlatdar is not required to be impleaded as party in substantive civil proceedings challenging legality of such orders. Hence, plaintiffs prayed for rejection of the application.

4. Heard learned advocate Shri P. N. Chaudhari for defendant and learned advocate Shri M. A. Khan for plaintiffs. Perused record.

5. On perusal of plaint, it reveals that the plaintiffs have filed present suit for declaration and perpetual injunction in respect of agricultural lands bearing Gat Nos.14 and 60. The plaintiffs have challenged the order dated 20.02.2026 passed by Tahsildar/Mamlatdar, Mangrulpir in proceedings under Section 5 of the Mamlatdars' Courts Act whereby alleged way through Gat No.14 was directed to be kept open. The plaintiffs have also challenged subsequent order passed by Sub-Divisional Officer vacating interim stay.

6. The defendant mainly contended that suit is barred under Section 26 of the Mamlatdars' Courts Act. Therefore, it is necessary to consider provisions of Sections 23 and 26 of the said Act. Section 23 provides revision before Collector against order of Mamlatdar and further provides that no appeal shall lie against such order. Section 26 bars certain suits under the Act in specified circumstances.

7. At this stage, it is pertinent to note that while deciding application under Order VII Rule 11 of Civil Procedure Code, the Court is required to consider only averments made in plaint and documents relied upon by plaintiffs. Defence taken by defendant cannot be considered at this stage except to limited extent permissible under law.

8. The plaintiffs specifically pleaded in the plaint that order passed by Mamlatdar and subsequent order passed by S.D.O. are illegal, void and not binding upon them. The relief clause also seeks declaration regarding invalidity of said orders and consequential perpetual injunction. Thus, the plaint discloses clear cause of action for filing present suit.

9. So far as contention regarding bar of jurisdiction is concerned, the plaintiffs relied upon judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Motilal Niranjana Bharathi and others Vs. Sunita Bajirao Patil and others decided on 04.08.2025. In said judgment, the Hon'ble High Court held that proceedings under the Mamlatdars' Courts Act are summary and temporary in nature and do not finally adjudicate civil rights. It is specifically observed that jurisdiction of Civil Court is neither expressly nor impliedly barred and substantive civil suit challenging orders passed under Sections 5 and 23 of the Act is maintainable.

10. The Hon'ble High Court further observed that disputes regarding easementary rights, right of way and obstruction are required to be adjudicated finally by competent Civil Court after full-fledged trial. Thus, prima facie it cannot be said that present suit is barred by provisions of Section 26 of the Mamlatdars' Courts Act.

11. The contention of defendant that plaintiffs withdrew revision proceedings without liberty and therefore suit is not maintainable also cannot be accepted at this stage. Withdrawal of revision proceedings under Section 23 of the Mamlatdars' Courts Act does not create bar against institution of substantive civil suit especially when proceedings under the said Act are summary in nature.

12. So far as objection regarding non-joinder of Tahsildar/ Mamlatdar or S.D.O. is concerned, the relief claimed by plaintiffs is substantially against defendant regarding alleged right of way and consequential injunction. The statutory authorities had acted in official capacity while passing orders under the Act. Whether such authorities are

necessary parties or not is a mixed question of fact and law which cannot be conclusively decided while considering application under Order VII Rule 11 of Civil Procedure Code. Mere non-joinder of party by itself is not ground for rejection of plaint.

13. Considering overall averments in plaint and settled legal position, this Court is of the opinion that plaint discloses cause of action and it cannot be said at this stage that suit is barred by any law. Hence, application filed by defendant deserves to be rejected. Hence, I proceed to pass following order.

ORDER

1. Application below Exh.12 filed by defendant under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure is hereby rejected.
2. No order as to costs.
3. Proceed further with suit.

Date : 08/05/2026

(Khwaja.C. Kalal)
Jt. Civil Judge Jr.Division, Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

<u>CERTIFICATE</u>		
I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.		
Name of Court	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.
Presiding Officer	:-	Khwaja C. Kalal
Judgment/Order uploaded by	:-	Shri. S. S. Rathod (Jr. Clerk)
Date of Judgment/Order	:-	08/05/2026
Judgment/Order signed by the presiding officer on	:-	08/05/2026
Judgment/Order uploaded on	:-	08/05/2026