

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 APEAL FROM ORDER NO. 61 OF 2016

GOPAL GOVIND LAKADE AND OTHERS
VERSUS
VIJAYKUMAR BABURAO KADAM AND OTHERS

Advocate for Petitioners : Thombre Chandrakant V.
AGP for Respondents : A.M. Phule
Advocate for Respondents : Gayke Shantilal J. Adv. for R/1 To 6

CORAM : V.K. JADHAV, J.
DATE : 07-03-2017.

P.C. :

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and order dated 26.07.2016 passed by the District Judge-4, Latur in R.C.A. No. 91 of 2016, the original defendant nos. 2 to 4 preferred this appeal.
3. Brief facts giving rise to the present appeal is as follows.
4. The respondent nos. 1 to 6 herein/original plaintiffs instituted R.C.S. No. 64 of 2016 for declaration and injunction in respect of the suit property. In the said suit on appearance, the present appellant-original defendant nos. 4 to 6 raised an objection about the jurisdiction and the learned 2nd Joint Civil Judge Senior Division, Latur by order dated 03.05.2016 upheld the said objection with regard to the jurisdiction and accordingly dismissed the aforesaid suit. Being aggrieved by the same, the original plaintiffs

preferred the R.C.A. No. 91 of 2016 and the learned District Judge, Latur by its impugned judgment and order dated 26.07.2016 allowed the appeal and thereby set aside the judgment and decree dated 03.05.2016 passed by the lower Court on the basis of preliminary issue and remanded the suit to the lower Court with certain directions. Hence this appeal.

5. The learned counsel for the appellants submits that, the trial Court has rightly upheld the preliminary objection raised by the appellant original defendant nos. 2 to 6 and in terms of the provisions of Section 26 of the Mamlatdars' Court Act and dismissed the suit. The learned counsel submits that, Nayab Tahsildar, Renapur by its judgment and order dated 22.09.2015 allowed the application of the present appellants and further directed to restore the natural flow of the stream situated towards the eastern side of the land gut no. 82 and such flow be diverted from eastern side of gut no. 83 finally to the southern side. Being aggrieved by the same, the respondent-original plaintiffs preferred appeal before the Sub-Divisional Officer, Renapur, however, Sub-Divisional Officer, Renapur by its judgment and order dated 12.01.2016 rejected the said appeal on the ground that there is no provision of filing appeal against the order of Nayab Tahsildar passed under the provisions of Mamlatdars' Courts Act. The learned counsel submits that, the judgment and order passed by the Nayab Tahsildar has attained the finality and in view of the provisions of Section 26 of the

Mamlatdars' Courts Act there is a bar of jurisdiction of the Civil Court. The learned Judge of the trial Court has rightly considered the same and accordingly dismissed the suit by accepting the preliminary objection raised by the appellant-original defendant nos. 4 to 6, however, the District Judge has erroneously allowed the appeal and remanded the matter with certain directions. The learned counsel submits that, the District Judge has not considered the provisions of section 26 of the Mamlatdars' Courts Act in proper perspective and accordingly passed the impugned judgment and order.

6. The learned counsel for the respondent-original plaintiffs submits that, the proceedings under the provisions of the Mamlatdars' Courts Act came to be initiated in the year 2014 and the Nayab Tahsildar vide its judgment and order dated 22.09.2015 concluded the said proceedings. The learned counsel submits that, the respondent-original plaintiffs instituted the suit on 10.02.2016 and there is no bar to entertain the suit and in that event the provisions of section 26(b) of the Mamlatdars' Courts Act has no relevance.

7. The learned counsel for the respondent-original plaintiffs in order to substantiate his contentions placed his reliance in the case of **Vishwanath s/o Rambhaji Bhalerao & Anr. V/s. Usha w/o Pralhad Kasbe** reported in **2011(1) Mh.L.J. 603**. The

learned single Judge of this Court in the above case relied upon by the respondent original plaintiffs held that the bar of the jurisdiction of the Mamlatdar's Courts Act under section 26(b) operates only when it is pointed out that civil suit is filed prior to the institution of proceedings under Section 5 of the said Act. In the instant case also the R.C.S. No. 64 of 2016 was filed after institution of the proceedings under Section 5 of the Mamlatdars' Courts Act. In view of the aforesaid position of law the only possible view is that the orders passed under the Mamlatdars' Courts Act would be subject to the decision of the pending R.C.S. No. 64 of 2016.

8. In view of the above legal position, I do not find fault in the impugned judgment and order passed by the District Judge. No interference is required. There is no substance in the appeal. Appeal is hereby dismissed.

(V.K. JADHAV)
JUDGE