

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2112 OF 2021

Sundarrao Haribhau Tanpure

VERSUS

Dadarao Sakharam Gawali And Others

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Advocate for the Petitioner : Mr. Khande Avinash A

AGP for Respondents/State : Mr. P.D. Patil

Advocate for Respondent Nos.1 & 2 : Mr. A.D. Raut

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CORAM : S.G. MEHARE, J.

DATED : APRIL 24, 2024

PER COURT:-

1. Heard learned counsel for the petitioner and learned counsel for the respondents.
2. The petitioner has impugned the orders of the Tahsildar and the Sub-Divisional Officer passed under Section 5 and 23(c) of the Mamlatdar's Courts Act. The record reveals that the Tahsildar initiated an action on a plain application. Any proceeding initiated under the Mamlatdar's Courts Act is a suit. Section 7 of the said Act provides that the suits shall commenced by plaint and it has further provided for the contents of the plaint. Section 9 provides for examination of plaintiff on oath. Section 10 provides that the plaint should be subscribed and verified and Section 11 further provides that the Mamlatdar shall endorse the plaint to the effect that it was duly subscribed and verified. Nothing as required under Sections 7 to 11

of the Mamlatdar's Courts Act was complied with. Both authorities went ahead and gone to treat the plain application as a plaint under the provisions of Mamlatdar's Courts Act. Both impugned orders are illegal and incorrect in the eyes of law. Hence, those are quashed and set aside.

3. The matter is remitted to the Tahsildar with liberty to the respondents to comply with the provisions of the Mamlatdar's Courts Act. The matter was opened in the year 2017; hence, the Tahsildar if the respondents complies with the provisions of the Mamlatdar's Courts Act is directed to decide the matter afresh within three months thereof.

4. In view of the above, the petition is allowed. No order as to costs.

(S.G. MEHARE, J.)