



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16505 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

Approved for Reporting	Yes	No
	-	✓

MERUBHAI MANDANBHAI BHARWAD

Versus

STATE OF GUJARAT & ORS.

Appearance:

MS MITA S PANCHAL(530) for the Petitioner(s) No. 1
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES
for the Respondent(s) No. 7

MR JAY TRIVEDI AGP for the Respondent(s) No. 1,2,3

MR SUNIL S JOSHI(2925) for the Respondent(s) No.
10,11,12,4,5,6,8,9

MR VIMAL A PUROHIT(5049) for the Respondent(s) No.
13,14

NOTICE SERVED BY DS for the Respondent(s) No.
7.1,7.2,7.3

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 19/08/2026

ORAL JUDGMENT

1. Rule. Learned advocates appearing for the parties waive service of notice of Rule.
2. By filing present petition under Article 226 of the Constitution of India as well as under the provision of the Mamlatdars' Court Act, 1906, the petitioner has challenged the order dated 08.07.2025 passed by the respondent – Mamlatdar, the order dated 23.09.2025 passed by the



respondent – City Deputy Collector as well as the notices dated 28.11.2025 and 12.12.2025 passed by the respondent – Mamlatdar.

3. The brief facts leading to filing of the present petition are as under,

The respondent nos.4 to 12 instituted suit under Section 5 of the Mamlatdars' Court Act on 18.09.2024 against the petitioner herein and after filing of the said Suit, the notice came to be issued upon the petitioner and, thereafter, panch-rojkam and map were prepared and, thereafter, the said suit was allowed, against which, revision application was preferred before the respondent – City Deputy Collector, which was rejected. Hence, the present petition.

4. Heard learned advocate, Ms. Mita Panchal for the petitioner, learned AGP Mr. Jay Trivedi for the respondent nos.1 to 3, learned advocate, Mr. Sunil Joshi for the respondent nos.4 to 12 and learned advocate, Mr. Vimal Purohit for the respondent nos.13 and 14.
5. Learned advocate, Ms. Panchal referred to the facts of the case as also documents produced on record and submitted that if the Hon'ble Court would make cursory glance upon the said set of documents, in that event, it is evident that there is procedural lapse on the part of the respondents – original plaintiffs while filing suit as well as the respondent authorities while proceedings with the suit. He submitted that in fact, the suit



preferred by the respondents – original plaintiffs is one page application, copy of which is produced on record at Annexure-D, which clearly goes on to show that it is neither against the petitioner nor against co-owners and as per the mandatory provision of the Mamlatdar Act, while submitting application, it has to be in a proper manner mentioning the provision as also the name of the defendant but here in the present case, it has not been done and despite that, the respondent – Mamlatdar had considered the said application as suit. She submitted that in fact, it is the duty casted upon the respondent – Mamlatdar to inform the plaintiff concerned to submit proper application/ suit in proper manner but here in the present case, no such direction was issued, therefore, there is procedural lapse on the part of the respondent – Mamlatdar.

6. Learned advocate, Ms. Panchal further submitted that after filing of the suit, panch-rojkam and Map of the disputed area were prepared and based on it, the impugned order came to be passed, whereby the suit has been allowed. She, however, submitted that in fact, at the time of preparing the panch-rojkma and Map of the disputed area, there is clear-cut violation of the provision of law in view of the fact that instead of preparing panch-rojkam and Map of the disputed area by the respondent – Mamlatdar, he had delegated his powers to the Talati-cum-Mantri, Lambha, who had



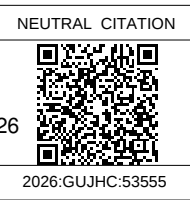
carried out panch-rojkam and Map. She submitted that even at the time of preparing panch-rojkam and Map, both the parties were not present and in their absence, such exercise had been carried out.

7. Learned advocate, Ms. Panchal submitted that in fact, it is the civil dispute, which has been raised before the respondent – Mamlatdar by filing one page application but the said aspect has not been properly considered by the respondent authorities. She submitted that in fact, the petitioner herein has already instituted civil suit before the competent civil court, which is pending for further adjudication and at the time of hearing before both the authorities concerned, those facts have been brought to their notice but no heed was paid to the request of the petitioner. She, therefore, submitted that in fact, the respondent – Mamlatdar has got no right to decide the civil rights of the parties but here in the present case, it has been decided and thus, the authority has acted against the settled law.
8. Learned advocate, Ms. Panchal submitted that in fact, as stated above, the application/ suit preferred by the respondents – original plaintiffs is not in consonance with the statutory provision of law as the co-owners of the property were not joined as party, however as soon as they came to know about the said fact, they have preferred an application for joining party, which has been allowed by this Court and they are being joined as



party because any adverse order, that would be passed in the present petition, would directly affect their rights. She submitted that at the time of filing of the application/ suit, they ought to have been joined as party defendants but they had not joined and despite that, the respondent – Mamlatdar had entertained the said application.

9. Learned advocate, Ms. Panchal, at this stage, submitted that admittedly here in the present case, there is violation of the provision of Sections 5 to 9 of the Mamlatdars' Court Act as the application/suit has not been presented in proper manner as also violation of Section 19(3) in view of the fact that the respondent – Mamlatdar had delegated powers to Talati-cum-Mantri, Lambha to prepare panch-rojkam and Map of the disputed area instead of drawing by himself. She submitted that not only that there is defect of joining necessary and proper party in the suit and documents produced on record clearly go on to show that there are defects in the suit. She, therefore, submitted that considering the above facts of the case, the impugned orders may be quashed and set aside and the matter may be remanded back before the respondent – Mamlatdar for fresh considering after following required procedure of law.
10. On the other hand, learned AGP Mr. Trivedi appearing for the respondent nos.1 to 3 submitted



that in fact, the impugned orders passed by the respondent authorities are based on documents available on record and the findings given and conclusion arrived at by the authorities are just and proper, which do not require interference at the hands of this Hon'ble Court. He, however, is not in a position to dispute about the procedural lapse on the part of the respondent authorities while entertaining the suit. He, therefore, submitted that appropriate order may be passed remanding the matter back before the authority concerned to decide it in accordance with law after providing opportunity to party concerned.

11. Learned advocate, Mr. Joshi appearing for the respondent nos.4 to 12 opposed the present petition and submitted that in fact, while passing impugned orders, the authority concerned has taken into consideration all aspects of the matter and passed impugned orders, which may not be interfered with. He, however, submitted that considering the facts that there is procedural lapse on the part of the authorities, he has no objection if the matter is remanded back for fresh consideration.
12. Having heard learned advocates for the parties and having considered the record of the case, I found that the application/ suit preferred by the respondent nos.4 to 12, who are original plaintiffs, is only one page application without mentioning the provision of law and without



joining the petitioner or the co-owners, who are the aggrieved persons because of passing impugned orders as also the suit does not disclose about the date on which the cause of action had arisen nor anything is mentioned in the plaint about the cause of action.

13. At this stage, I would like to reproduce the provision of Sections 7, 8, 19(2) and 19(3) of the Mamlatdar's Court Act,

"7. Suits commenced by plaint -

All suits under this Act shall be Commenced by a plaint, which shall be presented to the Mamlatdar in open Court by the plaintiff, and which shall contain the following particulars :-

Contents of plaint -

- [a] the name age, religion, caste, profession and place of abode of the plaintiff.
- [b] the name, age, religion, caste, profession and place of abode of the defendant;
- [bb] the nature and situation of the impediment erected and the situation of the lands which are adjacent to each other, and the nature of the relief sought;
- [c] the nature and situation of property of which possession for use is sought, or the nature of the injunction to be granted, as the case may be;
- [d] the date on which the cause of action arose;
- [e] the circumstances out of which the cause of action arose; and



[f] a list of the plaintiff's documents, if any, and of his witnesses, if any, showing what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be fixed under section 14."

8. Informal petitions to be treated as complaints-

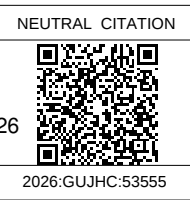
Where a petition not in the form of a plaint is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act, and shall inquire whether the petitioner desires to obtain relief thereby. If the petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under section 7."

19. Points to be decided by Mamlatdar at hearing.-

(1) xxx xxx xxx

(2) **Power of Mamlatdar to examine other witnesses and inspect property in disputes.-**

The Mamlatdar may, after due notice to and in the presence of, the parties, summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interests of justice so to do, and may, if he thinks fit, make a personal



inspection of the property in dispute in the presence of, or after due notice to, the parties.

He shall without unnecessary delay record a memorandum after hearing the parties on the spot if present, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.

(3) Record of Proceedings by Mamlatdar.-

The Mamlatdar shall with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding."

14. Thus from the above provision, in Section 7 of the Act, the mandatory contents of the plaint are mentioned. However, if the plaint does not contain the mandatory contents and is preferred by way of an informal application, in that case, even informal petitions / plaints can also be treated as plaint per Section 8 of the Act. Therefore, if any suit preferred by an aggrieved party, is not in consonance with the mandatory requirements of Section 7 of the Act, in that event, it is for the Mamlatdar concerned to treat the same as plaint after following the procedure as provided in Section 8 of the Act. Further, if the original plaintiffs express their desire to obtain relief as prescribed in Section 8 of the Act, in that event, it is the duty casted upon the Mamlatdar concerned to endorse the desire on the petition



and, thereafter, the petition can be treated to be a plaint as mentioned in Section 7 of the Act. After having endorse the desire of the original plaintiff, the concerned Mamlatdar is required to follow the procedure as prescribed under Sections 9, 10 and 11 of the Act. The said provisions read as under,

"9. Examination of Plaintiff on oath -

Where the plaint does not contain the particulars specified in section 7 or is unnecessarily prolix, the Mamlatdar shall forthwith examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint which shall thereupon be deemed to be part of the plaint. Where the plaintiff requires time to obtain any of the particulars specified in section 7, the Mamlatdar shall grant him such time as may under all the circumstances appear reasonable.

10. Plaint to be subscribed and verified -

When the plaint is presented and has, if necessary, been treated in the manner specified in section 9, the Mamlatdar shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court in the manner following, or to the like effect :

"1. A. B., the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."



11. Endorsement by the Mamlatdar -

[1] The Mamlatdar shall endorse the plaint to the effect that it was duly subscribe and verified.

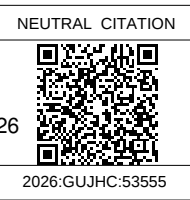
[2] Procedure where plaintiff cannot write (2)
Where the plaintiff cannot write, the verification may be written for him in open Court and he shall affix his mark to his name in token of the authenticity of the verification and the Mamlatdar shall, in such case record that the verification was made in his presence at the request of the plaintiff, and that his mark was so affixed."

15. Thus in view of the above provisions, it is evident that as per Section 9 of the Act, when a plaint does not contain the particular facts as stated in Section 7 of the Act, it is the duty of the Mamlatdar concerned to examine the plaintiff on oath and to ascertain from him/her the particulars specified in Section 7 of the Act. However in the present case on hand, the date on which the cause of action arose and the circumstances out of which the cause of action has arisen were not stated by the plaintiffs in the plaint. Therefore, the respondent - Mamlatdar ought to have followed the procedure as prescribed under Section 9 of the Act by examining the plaintiff on oath and after the plaintiff is examined on oath, the respondent - Mamlatdar was required to follow the procedure prescribed in Section 10 of the Act by making necessary verification as prescribed under Section 10 of the



Act and thereafter the respondent - Mamlatdar was expected to endorse the plaint to the effect that it was duly subscribed and verified. Having perused the documents produced on record, it is evident that the respondent - Mamlatdar has not performed any of the duty which is cast upon him by way of Sections 8 to 11 of the Act.

16. Not only that, here in the present case, as stated above, there is clear-cut violation of the provision of Sections 19(2) and 19(3) of the Act in view of the fact that the respondent - Mamlatdar has not personally visited the spot and prepared panch-rojkam and Map of the dispute area and instead of doing so, he had delegated his powers to the Talati-cum-Mantri, Lambha, who in turn had visited the spot and carried out panch-rojkam and Map, which is against the statutory provision of law as also against the settled law.
17. A bare perusal of the provisions of sub-section (2) of Section 19 of the Act, as quoted above, clarifies that the Statute casts a duty upon the Mamlatdar to examine the witness and inspect the property in dispute. It is specifically stipulated that the Mamlatdar, after due notice to the parties and in presence of such parties summon and examine any person as a witness in person and after making personal inspection of the property in dispute in presence of the parties, who are issued such notice, shall without unnecessary delay record a memorandum after hearing the



parties "on the spot". It is further provided that such memorandum shall form part of the record of the case. Further, bare perusal of the provision of sub-section (3) of Section 19 of the Act, as quoted above, it is evident that it also mandates that the Mamlatdar "shall" with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding.

18. At this juncture, a useful reference can be made to the decision rendered by the Coordinate Bench of this Court in the case of **Nagarbhai Bhikabhai Kedva vs. Deputy Collector, Banaskantha**, reported in **2023 (0) AIJEL-HC 245352**, wherein the Coordinate Bench has made observations and recorded findings, more particularly in paragraphs 14 and 15, which are directly relevant to the issue arising for consideration in the present petition, which read as under,

"14. Thus, in the present case, it was mandatory and a statutory obligation on the part of the Mamlatdar to undertake a necessary spot inspection of the property in dispute and after such a memorandum is prepared after hearing the parties on the spot, he was required with his own hand writing to make such memorandum or sign a memorandum of the substance of the evidence of each witness. The submission advanced by the private respondents with regard to the aforesaid procedure as prescribed under the statute being not mandatory does not merit acceptance. The second part of the Section 19(2) uses the expression "He shall without ...," and sub-section(3) to Section 19 also uses the expression "The Mamlatdar



shall...". The said provisions are required to be read in harmony with the main section 19(1), and not in isolation. Thus, it is mandatory and not discretionary for the Mamlatdar to follow the procedure as directed in the aforementioned provision.

15. Indubitably in the present case, the Mamlatdar has failed to exercise its powers as mentioned as prescribed by the Statute. Since, the Deputy Collector found the procedure adopted by the Mamlatdar Court being defective and de hors the statute, he was obligated to remand the matter to the Mamlatdar to undertake the necessary exercise as prescribed in the Statute, since the Statute does not in any manner empowers the Deputy Collector to carry out the exercise under the provisions of Section 19(2)(3) of the Act. Thus, the only option, which was left to the Deputy Collector, was to remand the matter to the Mamlatdar Court for undertaking fresh exercise of carrying out the spot inspection of the property and preparing the necessary panchnama. After collecting the evidence and after hearing the necessary parties, the Mamlatdar is required to pass a reasoned order by dealing with the evidence and the contents of the panchnama. In absence of such exercise undertaken by the Mamlatdar, the Deputy Collector, merely because on the documentary evidence which was in the form of revenue records as well as the report of the District Inspector of land records could not have decided the lis between the parties. The most important aspect in deciding the dispute is the 'spot inspection' and the carrying out the necessary panchnama which can reveal the actual right of pathway from the land in question. The procedure prescribed in Section 19 of the Act cannot be bypassed or ignored by taking shelter under other



documents like the DILR report or the revenue record. The veracity of such documents can only be examined by the spot visit of the land in question and preparing the necessary panchnama, since there is a possibility that the documents of the land in question may not reveal the actual ground reality, hence the Legislature in its wisdom has provided the procedure in section 19 of the Act so that the actual scenario of the rival claims can be ascertained.”

19. Aforesaid judgment supports the proposition that the statutory procedure prescribed under the Mamlatdars' Courts Act is required to be followed strictly and that the statutory function entrusted to the Mamlatdar cannot be bypassed or delegated in a manner contrary to the provisions of law.
20. Therefore having considered the facts of the case, it is not in dispute that the respondent – Mamlatdar had delegated powers to the Talati-cum-Mantri-, who in turn carried out exercise, which ought to have been done by the respondent – Mamlatdar, therefore, there is procedural lapse on the part of the authority concerned. In fact, it was mandatory and a statutory obligation on the part of the respondent – Mamlatdar to undertake a necessary spot inspection of the property in dispute and after such a memorandum is prepared after hearing the parties on the spot, he was required with his own hand writing to make such memorandum or sign a memorandum of the substance of the evidence of each witness. Over and above that, admittedly, though the Talati-cum-Mantri had visited the spot,



prepared the panch-rojkam and also Map of the disputed area, he has not summoned any of the parties and in their absence, such exercise has been carried out, which is also against the statutory provision of law as also against the settled law. Over and above that, it is also evident that during the pendency of the revision application before the respondent – Deputy Collector, the respondent – Mamlatdar had taken necessary actions to execute the said order and certain portion of cement-wall had already been removed, copies of photographs of such actions at the instance of the respondent – Mamlatdar have already placed on record. However be that as it may, considering the above factual aspects of the matter, the prevailing position as on today is required to be maintained by both the parties. Therefore, ends of justice would be served if the matter is remanded back to the respondent – Mamlatdar to decide the issue afresh after following due procedure of law and after providing ample opportunity to both the parties to lead evidence.

21. In the result, the present petition stands allowed partly. The impugned order dated 08.07.2025 passed by the respondent – Mamlatdar, the order dated 23.09.2025 passed by the respondent – City Deputy Collector as well as the notices dated 28.11.2025 and 12.12.2025 passed by the respondent – Mamlatdar are hereby quashed and set aside. Therefore, the matter is remanded back before the respondent – Mamlatdar to decide the suit preferred by the respondent nos.4 to 12 – original



plaintiffs in accordance with law after providing ample opportunity to all the parties. The respondent nos.4 to 12 is hereby directed to submit fresh suit as per mandatory requirement of the provision of law within one week from today and as soon as fresh suit is submitted before the respondent – Mamlatdar, it shall be considered and decided as expeditiously as possible preferably within a period of eight weeks thereafter. It is clarified that this Court has not considered the merits of the case. It is expected from all the parties to extend their cooperation in early disposal of the suit without seeking unnecessary adjournments. Further till the said suit is final decided by the respondent – Mamlatdar, all the parties are directed to maintain status quo as on today.

22. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam