

**IN THE COURT OF CIVIL JUDGE (S.D),
DUMRAON, BUXAR
PRESENT PRESIDING OFFICER SH. VINIT KUMAR SINGH**

TITLE SUIT NO. 155 of 1992

IN THE MATTER OF:

HARISHANKAR LAL AND OTHERS ...PLAINTIFFS

VERSUS

AMBIKA YADAV AND OTHERS ...DEFENDANTS

**ORDER
30.09.2024**

Present application dated 12.02.2024 has been filed by the defendants under Order 7, Rule 11 of C.P.C. for rejection of the suit on the grounds; firstly that plaintiff does not disclose a cause of action, secondly that this suit appears from the statements in the plaintiff to be barred by any law. The contention of the defendants is that the plaintiff under para 26 (a), 16 and 17 admitted that disputed land belongs to Pranpur Decree Suda Privy Council which is situated at west to the Shivpur village. And a title suit 22 of 1939 relating to this disputed land of Pranpur decree Suda has already been contested by the plaintiffs against the Maharaja Bahadur Dumraon. In this way land of Shivpur Diyar and Pranpur Decree Suda Privy Council is situated in two different Thana Brahmapur and Thana Simri respectively. And plaintiff has already admitted the fact that khatian of land described under schedule 3 of plaintiff comprising under khata no. 3 village Pranpur Decree Privy Council has been

created in the name of defendants. Therefore, no cause of action has been arose in respect of land of village Pranpur Decree Suda Privy Council. Moreover, plaintiff himself during his testimony admitted the fact that they didn't ever settle the land of Pranpur Decree Suda Privy Council with Landlord. Further, the contention of the applicant is that Title suit 22 of 1939 has already been decided by Court of First Additional Sub Judge Ara that land belongs to village Pranpur Decree Suda Privy Council but not to village Shivpur Diyar. Therefore, it is barred by law res-judicata and law of estoppel. Further, the plaintiffs have already lost many cases against the defendants and this suit has been instituted by concealing these facts. Thus, this suit is not maintainable but liable to be rejected.

Plaintiffs filed reply with contention that the application of the defendants are liable to be rejected. As such the plaintiff has brought this suit only with a view to cause delay as they have failed to bring any evidence. Further, it has been contended that rejection of plaint not proper, and suit cannot be held to be barred by law of res judicata and law of limitation on the basis of averment of plaint. Therefore, this application of the defendants are liable to be rejected with cost.

Heard, Ld.Counsels of both the parties. On perusal of the record it appears that this suit has been filed by the plaintiff for declaration that suit property is ancestral land of the plaintiff and for a decree of confirmation of possession of the plaintiffs. Further, it has also

been prayed to declare that survey khatiyani prepared during pendency of suit of land admeasuring 6 acre 95 decimil of village Pranpur Decree Suda Privy Council in the name of defendants and their ancestors is wrong and not binding upon the plaintiffs. On perusal of the averments made under para 1 to 19 of the plaint it appears that plaintiffs has made its case on the ground of his title and possession over the suit property. Further, on perusal of averments made under para 20 to 23 (a) and 25 it appears that facts relating to cause of action has specifically been made. Therefore, prima facie it appears that the cause of action relating to the suit property is mentioned therein. Further, the contention of applicant in respect of fact that suit is barred by law of estoppel and res judicata is not sustainable as such the question of res judicata and estoppel are mixed question of law and fact unless it appears that plaintiff has specifically admitted the facts relating to this. However, on perusal of facts available on the record it no way appears that plaintiff has ever admitted the fact relating to question of res judicata. Hence, question relating of application of principles of res judicata and estoppel can only be counted only after considering other facts than the facts available in the plaint. Hence, application of defendants for rejection of plaint is dismissed.

Further, on perusal of the record it appears that this suit is one of oldest case pending in this Court for evidence of defendants and it is in the list of targeted old case for disposal. Hence, defendant is

directed to conclude its evidence within 5 dates fixed for this record.

Sub Judge -III
Dumraon, Buxar