

ORDER BELOW EXH. 111 In Regular Civil Suit No. 24/2021

- (1) The plaintiff has preferred the present application for cancellation of issue of *Res Judicata*, framed pursuant to the order dated 24.03.2023, passed below Exh. 61 of this Suit.
- (2) The learned advocate for the plaintiff has also filed written arguments vide Exh. 116. The Ld. Advocate for the plaintiff contended that the preliminary issue regarding applicability of the principle of *res-judicata* came to be framed earlier below Exh.61 without properly considering the earlier proceedings and written submissions filed by the plaintiff. It is argued that the Court had already rejected the application under Order 7 Rule 11 CPC in Exh.9, wherein similar objections were raised, and therefore framing the preliminary issue again amounts to taking contradictory views. It is further submitted that the earlier suit relied upon by the defendants involved different parties and different reliefs and hence the provisions of Section 11 CPC are not attracted. According to the plaintiff, the question of *res-judicata* involves disputed facts requiring evidence, and therefore the issue ought not to have been framed as a preliminary issue. On these grounds, the plaintiff has prayed for deletion of the issue under Order 14 Rule 5 CPC.
- (3) On the other hand, the learned advocate for Respondent No. 2 has vehemently opposed the present application and reiterated that the plea of *res judicata* has been specifically and categorically raised in the written statement on the basis of prior litigations between the parties concerning the same subject matter. The Ld. advocate

for the respondent no. 2 filed written reply vide Exh. 119, wherein, it is submitted that once such a statutory defence under Section 11 of the Code of Civil Procedure is pleaded, the Court is duty-bound to frame an appropriate issue for proper and effective adjudication, and the same cannot be deleted merely because the plaintiff disputes its applicability. The application below Exh.61 seeking framing of the preliminary issue was allowed by this Court after hearing both sides and considering the pleadings as well as the settled legal position, including the ratio laid down by the Hon'ble Supreme Court in ***Hari Hanumandas Totala v. Hemant Vithal Kamat***, wherein it is clarified that questions relating to maintainability and right to sue may require adjudication upon framing of an issue and cannot always be decided under Order VII Rule 11 CPC. It is further submitted that rejection of the earlier application under Order VII Rule 11 CPC does not preclude the Court from framing and deciding a substantive issue at the stage of trial, as the scope of Order VII Rule 11 is confined to the averments in the plaint, whereas the plea of res judicata necessitates examination of prior pleadings, judgments and evidence. According to Respondent No. 2, the present application under Order XIV Rule 5 CPC is misconceived and filed belatedly after considerable lapse of time, and appears to be an attempt to avoid leading evidence on the preliminary issue already framed. It is therefore contended that the issue relating to res judicata and locus standi goes to the root of the matter and is essential for just decision of the suit, and hence does not warrant deletion.

- (4) Upon hearing both sides and on perusal of the record, it appears that the preliminary issue came to be framed earlier after considering the pleadings of the parties. The defence of *res-judicata* is specifically pleaded by the defendants with reference to earlier suits, and therefore determination of the said plea is directly connected with the real controversy involved in the present suit. The contention of the plaintiff that the earlier rejection of the application under Order 7 Rule 11 CPC operates as a bar to framing of the issue cannot be accepted. The scope of deciding an application under Order 7 Rule 11 CPC is confined to the averments made in the plaint, whereas the question of *res-judicata* often requires consideration of pleadings, judgments and evidence relating to earlier proceedings. Hence, rejection of the plaint-rejection application does not prevent the Court from framing an issue relating to Section 11 CPC. It is also well settled that under Order 14 Rule 5 CPC an issue already framed can be struck out only when it is shown to be wholly unnecessary or irrelevant for deciding the dispute between the parties. In the present case, since the defendants have raised a specific plea supported by reference to prior litigations, adjudication of the said plea is necessary for effective determination of the suit. The argument that the earlier suits involved different parties or reliefs relates to the merits of the issue, which can be examined at the time of trial and not at the stage of deletion of the issue.
- (5) In view of the above discussion, this Court finds that the preliminary issue framed earlier is neither unnecessary nor irrelevant and is required to be decided for complete and effective adjudication of the dispute. The grounds urged by the plaintiff in Application Exh.111 do not justify exercise of powers under

Order 14 Rule 5 CPC for deletion of the issue. The application is therefore devoid of merits and is liable to be rejected.

- (6) Thus, this Court is of the opinion that the preliminary issue framed earlier vide order below Exh.61 is relevant and necessary for effective adjudication of the dispute involved in the present suit, and no case is made out for exercise of powers under Order 14 Rule 5 of the Code of Civil Procedure for deletion of the said issue. Accordingly, the application filed by the plaintiff at Exh.111 for cancellation/deletion of the issue is hereby rejected.

Signed and pronounced in the open Court on today on this **28th day of February, 2026.**

Place : Morbi.
Date : 28.02.2026

(B. V. Sanchaniya)
Chief Judicial Magistrate
Morbi.
Judge Code GJ00745

KVA