

GJPM040015542019**Order Below Exh.47 in RCS No.53 of 2019**

1. The present application is preferred by the defendant No.1 under Section 11 of Civil Procedure Code, 1908 (“CPC” for short) for rejection of the present suit because earlier he has filed RCS No.9/2018 for present suit property which was allowed by the Court on date 21.02.2025 therefore, present suit of the plaintiff is barred by principle of resjudicata u/s Section 11 of CPC, hence, defendant No.1 has prayed to reject the present suit.
2. Per contra, plaintiff has filed the reply against the present application at Exh.50, wherein, it is mainly contended by the plaintiff that Section 11 of CPC applies only when the earlier case has been decided. Earlier Hon'ble Court has rejected the sale deed but possession right is different matter and presently plaintiff has possession of the suit property since year 2010. Therefore, present application of the defendant No.1 is required to be reject.
3. I have heard Mr. M. M. Gohil, Ld. Advocate for the plaintiffs s well as Mr. G. H. Upadhyay Ld. Advocate for the defendant. I have carefully gone through the record of present suit. On careful perusal of the record it appears

that, the plaintiffs have purchased suit property from the defendant No.1 under registered sale deed No.2627 dated 10.11.2017. Further, it appears that, pursuant to that registered sale deed the plaintiffs have seeking reliefs for declaration and interim injunction. In all, entire suit of the plaintiffs is based on registered sale deed No.2627 dated 10.11.2017.

4. Even the plaintiff has in his plaint and the PW-1-Rimlabhai Nansingbhai Rathva has in his Examination-In-Chief at Exh.38 stated that, the defendant No.1 has filed RCS No.9/2018 against the plaintiff for the cancellation of registered sale deed No.2627 dated 10.11.2017.

Now, RCS No.9/2018 decided by Hon'ble Additional Senior Civil Judge, Halol on date 21.02.2025, whereby, Hon'ble Additional Senior Civil Judge, Halol was pleased to allow RCS No.9/2018 and declared registered sale deed No.2627 false, void and not binding to the plaintiff (the defendant No.1 herein).

5. Therefore, registered sale deed No.2627 which was backbone of present suit of the plaintiff is being declared null and void by the competent Court having jurisdiction to try the suit. Under such circumstances, it is profitable to gone through Section 11 of Code of Civil Procedure, 1908 which reads as under ;

Section 11 : Res judicata.

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

6. Therefore, in light of Section 11 of CPC it appears that, while former suit decided by the competent Civil Court a issue in which the matter directly or substantially in issue

has been directly or substantially in issue in a former suit between the same parties or between parties under whom they are or any of them claim, litigating under the same title no Court shall try another suit.

Meaning thereby, where parties and subject matter are same in two or more different suit, out of which decided by the Court of competent jurisdiction, an order or judgment of that suit would be operate as resjudicate against subsequent suit/s. In a given case the plaintiff has filed present suit on the basis of registered sale deed No.2627 which is declared null and void by the Civil Court having jurisdiction. Therefore, this Court is of the opinion that, decision of Additional Senior Civil Court, Halol would be applied as res-judicate against present suit. Therefore, this Court would be under the law barred from entertaining present suit. Hence, I pass following final order ;

FINAL ORDER

- The present application at Exh.47 is hereby ordered to be allowed.
- Present suit is hereby rejected u/s 11 of CPC.
- No order as to cost.

Signed and Pronounced in open Court today, on this 4th day of July, 2026.

Date : 04/07/2026.
Place : Halol.

[Rajeshkumar Batuklal Joshi]
Principal Senior Civil Judge,
Panchmahals at Halol.
Judge Code : GJ00952