

12.08.2026

For Orders

ORDERS

On careful perusal of the entire materials available on record it is noticed to the Court that during the course of final arguments in the present suit the learned counsel appearing for defendant No.1 and 3 raised a point regarding resjudicata in view of the judgment and decree passed in O.S. No.129/2007. Further, contended that the said question goes to root of the maintainability of the present suit and deserves to be considered and decided

before considering other issues on merits. Accordingly, the learned counsel for defendant No.1 and 3 sought consideration of the said issue at the first instance.

The said submission has been considered in the light of the pleadings and issues framed in the present suit and material available on record heard the arguments on the above said issue and matter was set down for orders on preliminary issue.

On perusal of the record it is noticed to that the present suit in O.S. No.180/2023 and another suit in O.S. No.299/2023 are connected proceedings and, as per the Order passed by the Hon'ble District Court both the suits are directed to be tried simultaneously by this Court. The said direction of the Hon'ble District Court is binding upon this Court and proceedings in both the suits are therefore required to be conducted in accordance with the said directions.

It is also noticed from the pleadings and the contention raised by the defendant No.1 and 3 that the plea of

resjudicata in the present suit cannot be said to be wholly frivolous. On a prima facie consideration of the pleadings and the judgment relied upon by the defendant No.1 and 3 the question has to whether the present suit is barred under Sec.11 of the Civil Procedure Code requires consideration. However, the existence of a prima facie case on the question of resjudicata by itself does not warrant the Court to adjudicate the said question separately and dispose off O.S. No.180/2023 in isolation, particularly when the connected suit in O.S. No.299/2023 is required to be tried and disposed off simultaneously pursuant to the order of the Hon'ble District Court.

It is relevant to observe that the direction for simultaneous trial is intended to avoid inconsistent findings and conflicting decisions in respect of connected matters. If the plea of resjudicata raised in O.S. No.180/2023 is independently taken up and decided at this stage while O.S. No.299/2023 is required to be considered simultaneously, there is a possibility of the proceedings

being dealt within a manner inconsistent with the direction issued by the Hon'ble District Court.

Further, the plea of resjudicata is not a question which, in every circumstance, must necessarily be decided as a preliminary issue. The applicability of Sec.11 of CPC depends upon examination of the pleadings in the former and subsequent suits. In such circumstances, where the connected suit is directed to be tried simultaneously the Court can appropriately consider the plea along with the other issues while deciding both suits together.

Moreover, suit is O.S. NO.180/2023 and O.S. No.299/2023 have already reached the stage of final arguments. At this advanced stage of the proceedings, separately deciding the plea of resjudicata in one suit, without simultaneously considering and disposing off the connected suit, would not advance the object of the direction issued by the Hon'ble District Court.

At the same time, this Court makes it clear that the contention raised by the

defendant No.1 and 3 regarding resjudicata is not being rejected or decided against defendant No.1 and 3 by this Order. The said contention is kept open for consideration on merits at the time of final adjudication of the suits.

Therefore, having regard to the specific direction of the Hon'ble District Court for simultaneous trial of both suits and considering that both suits have already reached the stage of final arguments, this Court is of the opinion that it is not proper at this stage to separately adjudicate the plea of resjudicata and dispose off O.S. No.180/2023 in isolation. Accordingly, the request of the learned counsel for defendant No.1 and 3 to separately take up and decide the plea of resjudicata at this stage is declined, without expressing any opinion on the merits of the said plea and the plea of resjudicata raised by defendant No.1 and 3 is kept open for consideration along with the other issues at the time of final adjudication of O.S. No.180/2023 subject to and in conformity with the order of the Hon'ble District

O.S. No.180/2023
(O.S. NO.299/2023)

Court directing simultaneous trial of present suit on hand along with O.S. No.299/2023. Accordingly, the matter is set down for arguments on merits.

Call on 20.08.2026.

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*