

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.369/2019

Dated this the 02nd day of April - 2026

Plaintiff : Smt. Manjula W/o Ramesh Kundagol and
another

.Vs.

Defendants : Smt. Shobha W/o Suresh Karki and others

PARTIES TO IA

Applicants : Smt. Savita W/o Siddarth Itagi

.Vs.

Opponent : Smt. Shobha W/o Suresh Karki and others

ORDER ON IA

This I.A. is filed by the Advocate for defendant No.3 A U/O. 14 R. 2 R/w 11 of CPC praying this Court that, issue may be treated as preliminary issue and declare that, suit of the plaintiff is hit by principle of Res-judicata in the interest of justice and equity.

2. In support of the application defendant No.3A sworn affidavit stating that, the plaintiffs have filed a suit in OS No. 73/2011 against the defendants for the relief of partition and separate possession in respect of suit property.

After recording the evidence from both side, the suit of the plaintiff is dismissed on the ground that, suit property are self acquired property of late Somappa. The earlier suit OS No. 73/2011 schedule properties and present suit properties are one and the same and parties and relief sought are also same. Therefore, the suit of the plaintiff is hit by Res-judicata. Hence, prays to allow the application.

3. The Advocate for plaintiff filed objection and contended that, the plaintiff filed by defendant is not maintainable either in law or facts. The principle of constructive Res-judicata is not maintainable in the eye of law. The suit OS No. 73/2011 is filed in respect of one property. The present suit is different, in relation to cause of action and the suit properties. Therefore, the application is not maintainable and prays to dismiss the application.

4. I have heard both side on this I.A. Perused the pleadings of the parties, I.A. and affidavit. The following points arise for my consideration:

1. Whether the defendant No. 3A has made out grounds that, this Court has decided in respect of suit properties between the same parties in respect of same properties in earlier suit OS No. 73/2011 ?

2. What order?

5. My answer to the above points are as under.

Point No.1 : In the Negative.

**Point No.2 : As per final order,
for the following:**

REASONS

6. **Point No.1:** The plaintiffs have filed the suit against the defendants for the relief of partition and separate possession in respect of suit properties. The defendants appeared and filed written statement. Issues have been framed. The plaintiff examined PW.1 and marked certain documents and defendant led evidence and got marked certain documents as exhibit D series. When the case is posted for further defendant evidence, the Advocate for defendant No.3A has filed this application on the ground that, the suit of the plaintiff is hit by Res-judicata. On perusal of plaint in OS No. 73/2011, the plaintiffs have filed suit in respect of Sy. No. 213/2 measuring 5 acres 13 guntas at Hanchatageri, Hubballi Taluk. The present suit has been filed for partition and declaration in respect of 'B' schedule property. OS No. 73/2011 filed against the defendant No.10. The parties in OS No. 73/2011, the parties in this suit are different and properties are also different. To operate as Resjudicata the first finding must be on an issue which has been directly and substantially in issue in the former suit. If the finding is given incidentally while determining another issue, which was directly, and substantially in issue such finding cannot be said to be an issue which was directly and substantially in issue in the former suit. Therefore, in the

earlier suit this Court has not deciding directly or substantially in respect of all suit properties and parties. Hence, I answer point No1. in **Negative**.

7. **Point No.2**: In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER

The I.A filed by the defendant No.3A U/O.

14 R. 2 R/w 11 of CPC is rejected.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **02nd day of April - 2026**)

Sd/-

(Yamanappa Karehanumanthappa)
Pri. Senior Civil Judge, Hubballi.