

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO.325/2019

Dated this 22nd day of August, 2023

PLAINTIFF: Hajaresab S/o Abdulrasid Bannur,
Age : 30 Years, Occ : Business, ,
R/o : Market road, Savanur,
Tq : Savanur, Dist : Haveri.

Vs

DEFENDANT: Mahammadtahir S/o Munirsab Chudigar,
Age : 62 Years, Occ : Business,
R/o : Market road, Savanur,
Tq : Savanur, Dist : Haveri.

IA No.14

Applicant: Mahammadtahir S/o Munirsab Chudigar.
(Defendant)

Vs

Opponents: Hajaresab S/o Abdulrasid Bannur.
(Plaintiff)

ORDER ON IA No.4.

Defendant has filed this application U/Sec.11 R/W Sec.151 of Code of Civil Procedure for dismiss the suit.

2. The defendant Mahammadtahir S/o Munirsab Chudigar has sworn in an affidavit accompanying with I.A. no.4, wherein he stated that the father of plaintiff had filed OS No.56/1996 for specific performance of contract against him. Said suit disposed on 15.10.2005, in the said suit the Hon'ble Court directed the defendant to refund the earnest money with interest. The plaintiff preferred an appeal before District Court, Haveri in RA No.48/2005 (Old RA No.20/2001). Said appeal was dismissed. Thereafter, plaintiff's father preferred RSA No.166/2006. Wherein also the judgment passed by trial court was confirmed and appeal was dismissed. Then plaintiff preferred appeal before Hon'ble Supreme court. Said appeal was also dismissed. In respect of said suit property he also filed OS No.113/1997 same was disposed on 28.06.2002. Against the judgment and decree the present plaintiff's father preferred RA No.59/2005 said appeal was dismissed. Then he prepared RSA No.168/2006 before the Hon'ble High Court of

Karnataka. Same was also dismissed. Therefore, the present suit is hit by adjudication. Hence, prayed to dismiss the suit.

3. The plaintiff has filed objections to the IA wherein he denied the contents of application as well as affidavit accompanying with IA No.4. He contended that the defendant being the owner of suit property agreed to sell and plaintiff's father agreed to purchase the same. Accordingly the defendant executed agreement of sale on 01.05.1993. But the defendant breached the agreement. Therefore, plaintiff's father filed suit wherein Hon'ble Court directed the defendant to refund the earnest money with 10% interest. But till today defendant not paid the amount. The plaintiff's father was in possession over the suit property. The defendant handed over the possession of the suit property during the time of execution of agreement of sale. Now defendant has been trying to dispossess the plaintiff. Hence, he filed this suit. Therefore, the application is not maintainable. Hence, he prayed to reject application with cost.

4. Heard both side and perused the materials on record.

5. The following points arises for consideration.

1. Whether the application made out grounds to allow?

2. What order.?

6. My Answers to the above points.

Point No.1. In the Negative.

Point No.2. As per final order for the following

REASONS

7. **Point No.1.** Plaintiff has filed this suit for permanent injunction against the defendant restraining him from dispossess the plaintiff without due process of law from the suit property, by contending that based on the agreement of sale dated : 01-05-1993 the father of plaintiff was in possession of the suit property after his death the plaintiff has been in possession of the suit property. When the defendant refused to perform his part as per agreement dated : 01.05.1993 the father of plaintiff filed suit OS No.56/1996, in the said suit Hon'ble court directed the defendant to refund the earnest money. But the defendant not paid the earnest money till today. The defendant has been trying to dispossess the plaintiff from suit property. Hence, he filed this suit.

8. The defendant appeared and filed present application by stating that doctrine of res-judicata is applicable to the case. Hence, prayed to dismiss the suit. But in the application defendant used the word adjudication instead of res-judicata.

9. It is relevant to note here that admittedly the previous suit between the same parties in respect of same suit property, but the nature of the suit was different. The previous suit was for specific performance of contract based on the agreement of sale. The present suit is for permanent injunction based on the possession. Therefore, though the present suit between the same parties and respect of same property, the cause of action and nature of the suit are very different. Therefore the doctrine of res-judicata is not applicable to the case on hand at this stage. Even it can be taken as defence, but to decide the same it is required full fledged trial. Without trial it cannot be considered. Hence, application is not maintainable. Therefore, this court has answered the **point No.1 in the Negative.**

10. Point No.2. In view of the above discussion I proceed to following;

ORDER

**IA No.4 filed U/Sec.11 of CPC by the
defendant is hereby rejected.**

No order as to cost.

(Dictated to Typist directly on computer, corrected, signed and then pronounced
by me in the open court on this the 22nd day of August, 2023)

CJ and JMFC, Savanur

