

IN THE COURT OF PRL CIVIL JUDGE AT MALAVALLI

Dated this the 14th day of December, 2016

Present

Smt.M.BHARATHI, B.Com., LL.B.,
Prl.Civil Judge, Malavalli.

O.S.NO.281/2014

Plaintiff :

Chikkaboregowda,
54 years, R/o Lingapattana
Village, Halagur Hobli,
Malavalli Taluk, Mandya District

(By Sri KMR.,Advocate)

Vs

Defendant :

Karigowda S/o Andanigowda, 49 years
R/o Lingapattana Village,
Halagur Hobli, Malavalli Taluk,
Mandya District

(By Sri NKR., Advocate)

ORDER ON IA FILED UNDER ORDER 7 RULE 11-D
R/W.SEC.151 OF CPC

1. This is an application filed by the defendant under **Order 7 Rule 11(d) R/w.Sec.151 of CPC** with a request to reject the plaint as it is hit by principles of resjudicata.

2. This IA is supported with the sworn affidavit of defendant, wherein he has stated that the plaintiff has filed this suit for declaration and consequential relief of permanent injunction against him and he has filed written statement. According to this defendant he had filed a suit in O.S.78/2010 against the plaintiff and in the present suit and in O.S.78/2010 the subject matter of the suit schedule property is one and the same and the said suit in O.S.78/2010 came to be decree in his favour on 6.2.2013 and the plaintiff, who is the defendant in the said suit, has not preferred any appeal with respect to the said judgement and decree passed by this court. According to this defendant, the plaintiff again has filed the present suit with respect to same property, as such the suit is hit by principles of resjudicata and the suit is liable to be rejected.

3. The plaintiff has filed his objection by stating that the subject matter of suit in O.S.78/2010 and the present suit are not one and the same, the extent, boundary and property number of both the properties are entirely different and as such, the present application is not maintainable and it is liable to be rejected.
4. I heard arguments on both sides and perused the records.
5. The points that arise for my consideration are as under:
 1. **Whether the defendant proves that the present suit is hit by principles of resjudicata and as such, the plaint is liable to be rejected as sought in the application?**
 2. **What order?**
6. My answer to the above points are as under:

Point NO.1 - in Negative,

Point NO.2- as per final order

for the following:-

R E A S O N S

- 7. POINT NO.1:-** This is a suit filed by the plaintiff seeking the relief of declaration and consequential relief of permanent injunction with respect to suit schedule property. The defendant has come up with this IA seeking to reject the plaint as the same is hit by principles of resjudicata. According to defendant, he filed a suit in O.S.78/2010 against the present plaintiff with respect to very same suit schedule property and the said suit came to be decreed in his favour and the defendant in the said suit has not preferred any appeal against the judgement and decree and as such, the present suit filed by the plaintiff, who is the defendant in the previous suit with respect to very same property is not maintainable and as such, the plaint is liable to be rejected.

8. On perusal of the judgement and decree passed in O.S.78/2010, it reveals that it is filed for the relief of only permanent injunction. The present suit is filed for declaration and consequential relief of permanent injunction.

9. Sec.11 of CPC reads as under:

“ 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 suit court:

EXPLANATION:- 1) The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto:

- 2) For the purpose 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;**
- 3) 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;**
- 4) 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;**
- 5) 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;**

- 6) ***Where persons litigate bonafide 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;***
- 7) ***The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as reference, 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;***
- 8) ***An issue heard and finally decided by a court of limited jurisdiction competent to decide such issue, shall operate as resjudicata in a subsequent suit, notwithstanding that suit court of limited jurisdiction was not competent to try such***

subsequent suit or the suit in which such issue has been subsequently raised.

As stated supra, the present suit is filed by the plaintiff for the relief of declaration and consequential relief of permanent injunction. The previous suit filed by the defendant herein against the plaintiff herein i.e., O.S.No.78/2010 for permanent injunction only.

10. It is important thing to note that, here in this case, the plaint schedule is not properly disclosed the Junger number or the property number. Further, on perusal of the boundaries mentioned in the present suit and in O.S.78/2010, it is clear that the boundaries shown in both the suits are quite different. Though the parties of both suits are one and the same, the relief sought in both the suits and the boundaries mentioned in plaint schedule of both the suits are different. Hence, the contention taken by the defendant is not sustainable one. At this juncture, I am of the view that the suit is maintainable and the

principle of Resjudicata is not applicable to the case on hand. Accordingly, I answer point No.1 in negative.

11. POINT NO.2:- As per the discussion made on point No.1, I proceed to pass the following:-

O R D E R

The IA filed by the defendant under Order **7 Rule 11(d) R/w.Sec.151 of CPC** is hereby rejected.

The suit in the present form is maintainable.

The plaintiff is permitted to proceed with the present suit.

(Dictated to the Stenographer, corrected and then pronounced by me in the open Court on this the 14th day of December, 2016)

(M.BHARATHI)
PRL.Civil Judge, Malavalli.

