

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present:NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 16th day of December, 2022

O.S.No.85/2021

- Plaintiff/s :
1. Veenakumari
W/o Late. Sundararajeurs,
Aged about 62 years,
 2. Pavithra Urs
D/o Late. Sundararajeurs
Aged about 38 years,
R/at No.160, Prakruthi Lay out
T. Narsipura Main Road,
Mysuru.
 3. M.Mallarajeurs
S/o Late. Madarajeurs
Aged about 63 years,
R/at Ankanahalli Village,
Malalvalli Taluk, Mandya District.
 4. Devarajeurs
S/o Late. Madarajeurs
Aged about 61 years,
R/at Ankanahalli Village,
Malalvalli Taluk, Mandya District.
- P1 to 4 represented by their GPA holder
Deepak Urs (Plaintiff no.5)
5. Deepak Urs
S/o Late. Sundrarajeurs,
Aged about 41 years,
R/at Prakruthi Lay out,

the plaintiff has concealed that defendants herein filed a suit no.352/2012 against the plaintiff herein for the relief of permanent injunction in respect of suit property and said suit was decreed restraining the plaintiff herein from interfering or dispossessing the defendants from the suit property. No appeal was preferred by the plaintiff challenging the correctness of the said judgment and decree and as such it reached finality and binding upon parties to the suit. Therefore the plaintiffs have no locus standi to file the suit and the present suit is barred by the principle of resjudicata and there is no cause of action.

2. The plaintiffs have chosen to file written reply submitting that principle of resjudicata does not operate in the present case as the previous suit no.352/2012 filed by the defendants against the plaintiff herein was decreed with a rider that the defendants herein are entitled to protect their possession over the suit property till they are evicted by due process of law. In view of observation made in aforesaid suit, the fresh cause of action arose in favor of the plaintiffs on 28.11.2018 and as such the present suit is filed for recovery of possession and it is not barred by principles of resjudicata.

3. This court has heard Ld.Advocate for the plaintiffs as well as defendants and perused the record.

4. There is no merit in the argument of Ld.Advocate for the defendant no.1 that the suit is barred by principle of resjudicata. Admittedly, the earlier suit no.352/2012 filed by the defendants herein against the plaintiff came to be decreed with a rider that the defendants herein are entitled to protect their possession till they are evicted by due process of law which attained finality and binding on both the parties to the suit as none of them preferred appeal challenging the correctness of the judgment and decree. The observation

made in the said suit has given a cause of action to the plaintiffs herein to file the present suit for recovery of possession and the same is not barred under law and it is not hit by principles of resjudicata as alleged by the defendants. As far as other contention of the Ld. counsel for the defendant that there is no cause of action file the present suit is concerned it is well established law that only plaint averments has to be looked in to for deciding application U/on 7 rule 11 CPC. The pleas taken by the defendants in written statement would be only irrelevant at this stage. In the present case from the averment of the plaint it transpires that the plaintiffs have claimed the cause of action as arisen when they have requested the defendants to vacate and hand over the possession of the suit property to them as per the judgment and decree passed in suit no.352/2012 dated.28.11.2018 which was flatly refused by the defendants. This has given rise to cause of action. Therefore, the plaint cannot be rejected.

5. In view of the above discussions without much discussion I am of the opinion that the application is devoid of merits thereby liable to be dismissed. Consequently I proceed to pass the following:

ORDER

**I.A.No.III filed by applicants/defendant no.1
is hereby rejected with cost of Rs.500/.**

For cross examination of PW1.

Call on 11.01.2023

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 16th day of December 2022.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote