

KASM610008162012



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C., AT SAGAR.**

Present: SRI. NATARAJ YADAV .S, *M.B.A., LL.B.*,
Prl. Senior Civil Judge & J.M.F.C.,
Sagar.

Dated, this 21st day of December, 2023.

OS No. 23/2012.

PLAINTIFFS :

1. N.L.Ashoka s/o
N.G.Laxminarayana,
a/a 40 years,
2. Rukminiyamma w/o
N.G.Laxminarayana, major,
3. Smt. Geeta w/o
Ramachandra Yaji, major,

All are residents of
Anandapuram,
Sagar taluk.

(By pleader **Sh. K.S.Achyuta Venkatesh Rao**)

- Versus -

DEFENDANTS:

1. S.Sreepada Rao s/o
K.Swamy Rao, major,
R/at Nehru nagar,
Sagar city.
2. Swati d/o Raghavenda,
3. Chinmaya s/o Raghavendra,

Both are minors,
Represented by their natural
guardian mother Savita,
Resident of Mankalale village,
Aavinahalli hobli,
Sagar taluk.

4. K.S.Venkatesha s/o K.Swamy Rao,
major,
R/at Mankalale village,
Avinahalli hobli,
Sagar taluk.
5. Vimala w/o Mrityunjaya,
d/o K.Swamy Rao, major,
Geejagaaru village,
Talaguppa hobli,
Sagar taluk.
6. B.K.Nagaratna w/o Venkatesha,
Major,
Railway Station Road,
Anandapuram,
Sagar taluk.

(D.1, By **Sh. T.B.Manjunatha shetty.**, Advocate,
D.2, D.3, By **Sh. B.Tyagamurthy.**, Advocate,
D.4 By **Sh. E.Nagaraj**, Advocate,
D.5 By **T.S.Ramana**, Advocate,
D.6 By **B.G.S.**, Advocate)

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PARTIES TO I.A.No.XXI

Applicant/ Defendant : K.S.Venkatesha (D.4).

V/S

Opponents/Plaintiffs : N.L.Ashok & 2 others.

ORDERS

1. Vide this order, I shall dispose off an application filed by the defendant No.4 under order 7 rule 11(a) and (d) of Civil Procedure Code for rejection of plaint.

2. **The brief facts necessary for the disposal of the present application are that**, according to the defendants the plaintiffs have filed the present suit for recovery of damages against the defendants in respect of suit schedule property. Originally plaintiff (father of the plaintiffs) in suit No.454/1967 filed suit to declare that the Sale deed executed by his father is not binding upon his share, the said suit came to be dismissed. However, the said plaintiff preferred an appeal in RA No.93/1970 before the Prl. Civil Judge, Shivamogga, wherein the Judgment and decree passed in the aforesaid suit was set-aside and it was declared that the

plaintiff is entitled for his 1/3rd share and the Sale deed was not binding upon his share. Challenging the said judgment, the present defendants along with their father preferred second appeal before the Hon'ble High Court of Karnataka in RSA No.707/1972. However, the parties entered into a compromise in the said appeal and compromise petition was filed, wherein the defendants had agreed to give 1/3rd share in favor of the plaintiffs father and in turn the father of the plaintiffs had agreed that, he will not claim any mesne profit or accounts for the said period. The compromise decree was acted upon and the possession was later delivered to the father of plaintiffs. The plaintiffs subsequent to taking of the possession have filed the present suit seeking for recovery of damages and as such, the suit is hit by principles of Res-judicata. Once the plaintiff's father has given up rights with regard to the claim of the damages or mesne profits, the legal representatives cannot file the present suit claiming for damages and thus, the present suit is not maintainable and it also acts as estoppel against them. In view of the section 101 of Indian Evidence Act there is no cause of action for the plaintiff to file the present suit and as such, it is liable to be rejected.

3. The plaintiff has filed the present suit for recovery of damages from 20.04.1978 till delivery of possession by the

defendants. It is stated that, the father of the defendants was the purchaser of the suit schedule property bearing sy.no.257/63. However, one of the son of vendor namely M.G.Lakshminarayana, (father of the plaintiffs) who was the minor at the time of sale filed the suit for partition and to declare that the sale deed is not binding upon his share. However, the suit came to be dismissed, but the appeal was allowed. In the meanwhile RSA 707/1972 was filed by the plaintiffs father challenging the judgment and decree passed in the suit. However, at the instance of elders of the village, the matter was compromised and the parties had entered into compromise, wherein the defendants' father had agreed to give 01-03 Acre of land in sy.no.57 as the share of the plaintiffs father in the joint family properties. In turn the original plaintiffs father undertook to pay Rs.15,000-00 to the defendant No.1 for the cost of improvement made by him and also plaintiffs father undertook that he will not claim mesne profits or accounts for the relevant period. However, that the legal representatives of the defendant No.1 did not act according to the terms of compromise petition i.e., delivery of possession of 01-03 Acre despite paying of Rs.15,000-00 as agreed in the compromise petition. Instead of obtaining the compromise decree, the legal representatives of defendant No.1 filed the suit to declare that the compromise decree in suit No.203/1998 to declare

that the compromise decree is not binding on them, the suit came to be dismissed and appeal preferred against the said judgment also came to be dismissed. Later RSA 491/2007 was preferred before the Hon'ble High Court of Karnataka challenging the correctness of the Judgment passed in the appeal bearing No.120/ 2002. Ultimately, the said appeal also came to be dismissed by imposing cost of Rs.30,000-00. In the said judgment, it was specifically directed to the Executing court, which was executing the compromise decree to take coercive step to put the father of the plaintiffs in possession of the suit schedule property as per the compromise decree. Accordingly, Executive Court issued the delivery warrant with the assistance of the Police protection. Accordingly, the plaintiff was put into possession of the suit schedule property and they are enjoying it as absolute owner. The defendants ought to have deliver the possession to the plaintiff's father on or before 20.04.1978 as per the compromise decree, but they have handed over the possession in the year itself till that period they have illegally squatted over the suit schedule property and enjoyed the income derived from it. The plaintiffs being the owners of the suit schedule property are entitled for the said income or in form of damages, the defendants are liable to pay them the compensation and as such, the present suit is filed.

4. Defendants filed an application under order 7 rule 11 of CPC seeking rejection of plaint on the ground that the present suit is barred by the Principles of Res-judicata as the father of the plaintiffs in the earlier suit has relinquished his rights from claiming the mesne profits or accounts and as such the legal heirs of the plaintiffs cannot seek for damages as prayed for in the present suit.

5. Reply to the said application was filed by the plaintiff contending that the father of the plaintiff in the earlier suit has relinquished his rights in respect of the mesne profits or accounts only during the period of the pendency of the suit. The defendants ought to have delivered the possession into the plaintiff's father on or before 20.04.1978 as per the compromise decree. The defendant intentionally disobeyed the compromise decree and delivered the possession to the plaintiffs only after issuance of delivery warrant by the executing court as per the direction of the Hon'ble High Court of Karnataka in RSA 491/2007 and as such the defendants are liable to pay the compensation to the plaintiffs in the form of damages for illegally retaining the suit schedule property. As no claim of damages was abounded by the father of the plaintiffs, the present suit is not barred either by the principles of Res-judicata or estoppels as alleged. The present suit is filed only with an intention to dodge the matter and

harass the plaintiffs. The conduct of the defendant No.2 being a Advocate is not appreciable and he is the Master mind behind this frivolous application against whom the Hon'ble High Court of Karnataka came down heavily in RSA No.491/2007 and imposed a cost of Rs.30,000-00 as a compensation to the father of the plaintiffs for his delayed tactics and unethical practice made by him.

6. I have heard the Ld. Counsel for the parties and perused the records.

The first and foremost question before this court is that, whether the suit is barred by Principles of Res-judicata and Law of Estoppel?. The question is as regards applicability of section 11 of CPC and section 115 of Evidence Act.

7.1. Section 115 of Indian Evidence Act is reproduced as under:-

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

To bring the case within the scope of estoppel as defined in section 115 of the [Evidence Act](#): (1) there must be a representation by a person or his authorised agent to another in any form a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel; (8) only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee.

7.2. Section 11 of CPC is reproduced as under:-

11. Res judicata .-- 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 such Court.

Explanation I .--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.

Explanation II .--For the purposes 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.

Explanation III .--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.

Explanation IV.--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.

Explanation V.--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.

Explanation VI .--Where persons litigate bona fide 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. The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, 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.

Explanation VIII .--An issue heard and finally decided by a Court of limited jurisdiction, competent

to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

7.3. The said section embodies the doctrine of res-judicata or rule of conclusiveness of a judgment, as to the points decided either of fact or of law or of fact and law, in every subsequent suit between the same parties.

7.4. It embodies the principle that "one suit and one decision is enough for any single dispute".

7.5. The section enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in subsequent litigation. In the absence of such a rule, there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses.

7.6. The doctrine of res-judicata is beautifully explained in judgment titled **Satyadhyan Ghoral Vs. Deorayen Debi AIR 1960 SC 941**, in following words:-

"The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that a res is judicata, it shall not be adjudged again. Primarily it applies between past litigation and future litigation. When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or preceding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no

appeal lies, neither party will be allowed in future suit or proceeding between the same parties to canvass the matter again."

7.7. The doctrine of res-judicata is based on three maxims:-

(i) *nemo debet lis vescari pro una et eadem causa* (no man should be vexed twice for the same cause).

(ii) *Interest reipublicae ut sit finis litium* (it is in the interest of the State that there should be an end to a litigation)

(iii) *resjudicata pro veritate accipitur* (a judicial decision must be accepted as correct).

7.8. The five conditions, which need to be satisfied, to constitute a matter as res-judicata under Section 11 are as under:-

a) The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in previous suit.

b) The former suit must have been a suit between the same parties or between parties under whom they or any one of them claim.

c) Such parties must have been litigating under the same title in the former suit.

d) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.

e) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

In the present case none of the conditions are met as under-

The present suit is filed for recovery of damages and the earlier suit was filed by the father of the plaintiffs for relief of partition and another suit was filed by the defendants for the relief of declaration to declare that the compromise decree is not binding upon them. As such the matter directly and substantially in issue in the subsequent suit are not the same, which was directly and substantially in issue in previous suit. It may be noted that upon comparison of previous suits and present suit one can see that the complaints are not similar.

That though the parties to the present suit and former suit are the same, the present suit is primarily against the defendants for the relief of damages as they failed to deliver the possession as per the compromise decree and enjoyed

the income derived from the suit schedule property till the date of delivery of possession.

The plaintiffs' father in the compromise decree filed in the RSA No.707/72 abandoned his claim in respect of mesne profits and accounts in respect of his 1/3rd share in the suit schedule properties. However, the present suit is filed for recovery of damages against the defendants for the willful default committed by them in delivering the possession as per the compromise decree. There is no abounded of the claims of subsequent damages by the plaintiffs' father to claim that the plaintiffs' father had foregone his rights in claiming the damages. Thus, there is no merits in the arguments canvassed by the Ld. counsel for the defendants that the suit is barred by Principles of Res-judicata as well as Law of estoppel. The Principles of Res-judicata will apply only when the lis; was inter-parties and attended finality on the issues involved. The said principle will not apply the case on hand as there is no finality on the issues involved in the present suit i.e., entertainment of the relief of damages or mesne profits.

No representation was made to defendants by the plaintiffs' father wherein he has waived his rights in respect of future damages. Therefore, there is no act of estoppels and the defendants cannot plead the same.

8. As a sequel of above discussion, this court is of the considered view that the suit is not barred by Principles of Res-judicata or law of estoppel and there is no merit in the present application and it is liable to be dismissed. It clearly appears that defendants are dodging the matter. It is to be noted that the defendants are filing application after application and are adopting delaying tactics on one pretext or other. Therefore, the present application is to be dismissed by imposing heavy cost. Consequently, I proceed to pass the following-

ORDER

**I.A.No.XXI filed by the applicant/
defendant No.4 under order 7 rule 11
(a) & (d) of CPC, is hereby dismissed
with exemplary cost of Rs.3000-00.**

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 21st day of December, 2023.)

(NATARAJ YADAV S)
Prl. Senior Civil Judge & J.M.F.C
Sagar.