

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC
AT CHIKKANAYAKANAHALLI**

Present : Smt.Aparna.R, B.Com, LLB
Addl. Civil Judge & JMFC

Dated this 22nd Day of July, 2024

O. S. No. 44/2024

PLAINTIFF : Thimmaiah
S/o Late K.R.Krishnaiah
Aged about 45 years,
R/o : Ganganayakanahalli Village,
Kandikere Hobli, Kandikere Post,
Chikkanayakanahalli Taluk,
Tumkur District.

- Vs -

DEFENDANTS :

1. **Eshwarachar**
S/o Late Panchalingachar
Aged about 50 years
2. **Chandrachar**
S/o Late Panchalingachar
Aged about 48 years
3. **Nagarajachar**
S/o Late Panchalingachar
Aged about 45 years
4. **Gangadharachar**
S/o Late Panchalingachar
Aged about 40 years

All are R/o Sadarahalli Village,
Kandikere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District.

I.A.No.2

APPLICANT : Gangadharachar

- Vs -

OPPONENTS : Thimmaiah

PREAMBLE

i	Provision under which the application is filed	Under Order VII Rule 11 of CPC
ii	Relief sought for	Rejection of plaint
iii	Date on which the application is filed	11/03/2024
iv	Number of the application	IA No.2
v	Date on which objections are filed by different opponents	08/04/2024
vi	Date on which orders were passed on the said application.	22/07/2024

ORDERS ON I.A.No.2

The defendants have preferred this application under Order VII Rule 11 of CPC praying to reject the plaint for the suit having hit by the principle of res judicata.

1. In the affidavit annexed to this application, the defendants contend that this plaintiff's father K.R.Krishnaiah S/o Late Ranganayaka had filed a suit earlier against these defendants before the Hon'ble Court of the Principal Civil Judge & JMFC, Chikkanayakanahalli seeking the relief of permanent injunction and the same was dismissed as not pressed on 11/10/2017 upon filing a Memo. That thereafter, the said K.R.Krishnaiah S/o Late Ranganayaka again filed another suit in OS No.6/2018 and subsequent to his death, the plaintiff herein was arraigned as the legal representative in the said suit, as the plaintiff herein did not lead evidence, the said suit came to be dismissed for non-prosecution on 11/10/2023. That the plaintiff herein, without averring the aforesaid facts has filed this suit. That neither the plaintiff's father nor the plaintiff himself had made any efforts to prosecute the previous cases and have got the same dismissed and again the plaintiff has preferred this untenable suit against these defendants. That the earlier suit in OS 44/2017 and OS No.6/2018 both are concerned with the same suit property and the plaintiff has been filing multiple suits against these defendants one after the

other without any just cause and hence based on these grounds the defendants pray to allow the application and reject the plaint.

2. Per contra, the application is resisted by the plaintiff contending that the plaintiff's father was in possession and enjoyment of the suit properties and have been carrying out bagar hukum saguvali for the past 30 years and improved the said land and also paid TT to the government and has grown neem and mango tress on the same and that the plaintiff's father has also preferred an application for grant of the said land which is pending consideration. Despite the said facts being within the knowledge of these defendants, they have been attempting to dispossess the plaintiff of the suit property. Since the defendants had attempted to cause similar acts earlier, OS No.06/2018 came to be filed before this Court and subsequently, in presence of the panchayatdars the issue was resolved and the defendants assured not to interfere with the plaintiff's possession, however the defendants have not adhered to their words and hence the plaintiff is constrained to file this suit. Although the earlier suit was between the same parties and same

property, the trial was not held and as such, the issues were not adjudicated and no decision thereon was arrived at and hence the application for rejection on plaint on the ground of res judicata does not arise and hence prays to dismiss the application.

3. Upon hearing both sides and perusal of the materials placed on record, the short point that arises for the consideration of the consideration of this Court is ***whether the plaint is liable to be rejected for the suit having hit by the principle of res judicata?***

4. This Court answers the aforesaid point in the ***Negative***, for the following:

REASONS

5. Admittedly, this is a suit of bare injunction, where the plaintiff apprehends of dispossession at the hands of the defendants. The plaintiff also admits of having filed the previous suit in OS 6/2018, post which there is said to have a settlement arrived at between the rival parties. Upon perusal of the C/c of the order sheet in OS 6/2018, it appears that the suit was dismissed for

non prosecution as the plaintiff failed to lead evidence. As also it is evident from the C/c of the order sheet and memo dated 11/10/2017, OS No.44/2017 filed by the plaintiff's father against the defendants was dismissed as not pressed. Although the parties and the properties involved all these suit are one and the same, the trial was not conducted in the said previous cases and no facts in controversy between the parties were adjudicated upon.

6. At this juncture, it is pertinent to refer to the provision of Order VII Rule 11, which is as extracted below:

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the

requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate

(f) where the plaintiff fails to comply with the provisions of rule 9 Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

Upon plain reading of the aforesaid provision, the words “the plaint shall be rejected (a) where it does not disclose a cause of action” and “(d) where the suit appears from the statement in the plaint to be barred by any law” connotes that in order to ascertain if the suit fall sunder any of these two clauses or under any other

clauses enumerated therein, the statements made in the plaint are germane and the same has to be analysed and interpreted and not based on any other materials or defence raised in the written statement.

7. At this juncture it is also relevant to refer to Section 11 of CPC, which is as extracted below:

“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.”

In order to prove the plea of res judicata, it is utmost important to and also obligatory to make reference to the issues, pleadings and the judgment in the former suit whilst adjudicating on plea of res judicata.

8. In the case on hand, the defendants in the application has clearly averred that the earlier suits in OS No.44/2017 was dismissed as not pressed and that the suit in OS No.06/2018 was dismissed for non-prosecution. Hence the issues that were raised in the previous suits were not adjudicated upon and therefore, no findings on the issues were rendered. When such being the case, this is suit against the defendants does not attract the principle.

9. Having said so, while deciding application under Order VII Rule 11 of CPC, the Court is constrained to look into the four corners of the plaint alone and nothing beyond that. At this juncture it is beneficial to refer to the decision rendered by the Hon'ble Supreme Court in the case of ***Keshav Sood Vs. Kirti Pradeep Sood & Others*** reported in ***2023 LiveLaw SC 799***, which has held in Para 5 & 6 as below:

“As far as scope of Rule 11 of Order VII of CPC is concerned, the Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked

into while deciding such application. Hence, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts.”

10. Upon applying the ratio of the decision cited above, this Court opines that the principle of res judicata cannot be decided under this application. It is also evident that, since the issues involved in the earlier suits have remained unadjudicated, there is no decision on the same that would bar the trial of this suit and hence this Court answers the point for consideration in the Negative and proceeds to pass the following:

ORDER

I.A.No.2 filed under Order VII Rule 11 of CPC is hereby dismissed. No order as to costs.

(Directly typed by me onto my laptop, revised, corrected and then pronounced by me in open Court this 22nd Day of July, 2024)

Sd/-

**(Smt.Aparna.R)
Addl. Civil Judge & JMFC, C.N.Halli**

**ORDER PRONOUNCED IN THE OPEN
COURT VIDE SEPARATE SHEET**

**I.A.No.2 filed under Order
VII Rule 11 of CPC is hereby
dismissed. No order as to costs.**

ACJ & JMFC,