



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE &
JMFC., GUBBI.**

Dated on this the 14th day of December, 2023

**PRESENT: SMT. POORNIMA .K. YADAV,
B.A.LL.B., LL.M.,
Addl. Sr. Civil Judge & JMFC,
Gubbi.**

ORIGINAL SUIT NO. 126/2022

Plaintiff/s

- :1.** Gangadhar R
S/o Rajanna,
Aged about 23 years,
2. Yogesh R
S/o Rajanna,
Aged about 22 years,

Both are
R/at Thimmegowdanapalya Village
Sirivasa Post,
Hebbur Hobli,
Tumkur Taluk and District.

(By Sri M.P., Adv.)

Vs.

Defendant/s:

1. Smt. Narasamma,
W/o Late Channappa
@ Channegowda
Aged about 78 years,
R/at Thenginamaradapalya Village,
Heddigere Dakale,
Yadiyuru Hobli,
Kunigal Taluk,
Tumkur District



2. Shivanna
S/o Late Channappa @ Channegowda,
Aged about 60 years.
3. Rajanna
S/o Late Channappa @ Channegowda,
Aged about 50 years,
All are R/at
Thenginaradapalya Village
Heddigere Dakale, Yadiyuru Hobli,
Kunigal Taluk,
Tumkur District.

(D1 to 3 by Sri R.B. Adv.)

PARTIES TO I.A.NO.III

Applicant/Defendant No.2 : Sri. Shivanna

Vs.

Opponent/plaintiff : Sri. Gangadhar and others

Provision under the Application	Under Order 7 Rule 11 of CPC
Application Relief sought for	Return of Plaint
The date of the application is filed	21.08.2023
Interlocutory Application Number	III
Date of objection filed by the defendants	12.10.2023
Date of orders passed	14.12.2023

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.



: ORDERS ON I.A.NO.III:

When the matter was pending for plaintiff evidence, the present application was filed.

2. The defendant No.2 through his counsel filed this application U/O 7 Rule 11 (d) read with Section 11 of Code of Civil Procedure seeking to dismiss the suit as hit by principles of Res Judicata.
3. The application is accompanied with the affidavit of the defendant No.2, and also on behalf of other defendants wherein it is stated that the plaintiff has filed this suit for partition and separate possession which is already decided in OS No. 518/2022 on the file of Prl. Civil Judge, Kunigal and compromise decree is drawn in the said suit dated 13.08.2022 in which the father of the plaintiff is party to the said suit and the said compromise is without any force or undue influence and voluntarily arrived by the parties and the parties are in possession and enjoyment of the suit schedule property on the basis of the Compromise



decree. It is further stated that registered partition dated 29.12.2017 has taken place between the 1st wife, 2nd wife and brothers of Late Channappa S/o Boraiah i.e. the grandfather of the present plaintiffs. As per the said partition, the defendant No.1 is the absolute owner and he is in possession of the suit schedule property. In OS No. 518/2022 before the Senior Civil Judge, Kunigal the grandmother of the plaintiff arrived at Compromise and same is known to the plaintiff. The mother of the plaintiff deserted the father of the plaintiff about 25 years back and there is no relationship between the plaintiff and the defendant but the plaintiff filed this suit without any cause of action in view of partition deed dated 29.12.2017 and compromise decree dated 30.08.2022.

4. It is further stated that the present suit with respect to suit schedule property and with respect to the parties in dispute is already settled in the previous law suit on the file of Prl. Civil Judge, Kunigal in OS No.518/2022 which



has resulted in final judgment of compromise decree on merit which was adjudicated by the Court after considering substantive issues involved in the suit. Hence, sought to allow the application.

5. On the other hand, the counsel for the plaintiffs filed objection and contended that the application is not maintainable and it is liable to be rejected. It is contended that the present application is filed only to drag on the proceedings. It is contended that the present suit is filed by the plaintiff on 02.07.2022, thereafter suit summons were issued to the defendant No. 1 to 3 on 08.07.2022 by fixing date of hearing on 10.08.2022. Thereafter the defendant No. 1 to 3 through defendant No.2 got filed suit before the Additional Civil Judge and JMFC, Kunigal in OS No. 518/2022 on 11.08.2022 and the said suit was compromise on 13.08.2022 within span of 3 days which shows that OS No. 518/2022 was intentionally prepared and decided. The defendant No.2 clearly admitted that the



defendant No.1 is the Grandmother and the defendant No.3 is the father of the plaintiffs. The present application is filed with common interest of the defendants. Hence, sought to reject the application.

6. Heard both the counsel for the plaintiff and defendant.
7. Upon hearing and based upon materials available on record, the points that arise for my consideration are:

1. Whether the present suit is hit by principles of Res-Judicata in view of compromise decree in OS No. 518/2022 dated 13.08.2022?

2. What order ?

8. My findings to the above points are as under;

Point No.1: In the Negative

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

: R E A S O N S :

9. **Point No.1** : This suit is filed seeking relief of Partition



and separate possession of plaintiffs 2/ 3rd share in the 1/3rd share of the defendant No.2 in respect of Item No. 1 to 7 of the suit schedule properties. The plaintiffs are before the court claiming their rights over the suit schedule properties as children of defendant No.2 and that the suit schedule properties are the ancestral and joint family properties of the plaintiffs and the defendants.

- 10.** The materials on record discloses that after appearance of the defendant No. 1 to 3 the matter was said for trial, thereafter the plaintiff filed application to implead proposed defendant No.4 and during the proceedings on the said application, the defendant No.2 also on behalf of other defendants filed the present application seeking for dismissal of the suit as hit by principles of Res-Judicata.
- 11.** The application filed by the defendant No.2 shows that the defendants urged that the present suit is hit by principles of Res-Judicata on the ground that the



defendant and the father of the plaintiff as parties in OS No. 518/2022 on the file of Prl. Civil Judge, Kunigal entered in to compromise in respect of the suit schedule properties and in the said suit compromise decree is drawn which shows that the matter in issue involving the subject matter of the suit is decided as such, the present suit is not maintainable.

- 12.** The plaintiff objected the present application on the ground that the compromise entered in OS No. 518/2022 was prepared and decided by the defendants after filing of this suit as the suit in OS No. 518/2022 was filed on 11.08.2022 and ended in Compromise on 13.08.2022.
- 13.** The counsel for the defendants produced copy of Order sheet of OS No. 518/2022 on the file of Addl. Civil Judge and JMFC, Kunigal which shows that the present defendant No. 1 to 3 along with one Lakshmiddevamma filed the said suit wherein the present defendant No.2 is



the plaintiff. The said suit was filed on 11.08.2022 and same ended in Compromise before the Lok-Adhalath on 13.08.2022 on the basis of compromise petition involving the present Item No. 2 to 7 of the suit schedule properties as the subject matter of the said suit.

14. Section 11 of CPC provides for Res-Judicata wherein no court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially issue in a former suit between the same parties or between the parties under whom they or any of them claim, litigating under the same title in a competent court to try such suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

15. The counsel for the defendant relied on observations as under:

1. (2000) 1 MLJ 38 (Mad-HC) between K.
VENKATACHALAM V/s A.R.



KRISHNASWAMY where in it is held that:

“ In this case, it was held that when parties have entered into a compromise and the compromise decree has been passed, the agreement is binding upon the parties, and a fresh suit on the same cause of action would not be maintainable.”

2. (2001) 3 KLT 653 (Ker-HC) between AULOCHANA AMMA V/s NARAYANAN NAIR where in it is held that:

“ This case highlighted that once a compromise decree is passed, it operates as res judicata, and the matters covered by the compromise cannot be re-agitated in subsequent litigation”

3. AIR 1965 SC 1153 between GULABCHAND CHHOTALAL PARIKH V/s STATE OF GUJARAT where in it is held that:



“ The Supreme Court in this case emphasized that a compromise decree is as binding as any other decree and is conclusive between the parties to the compromise.”

4. AIR 1951 Mad 706 between V.R. RAGHAVA CHARIAR V/s PONNUSWAMY CHETTIAR where in it is held that:

“ This case clarified that a compromise decree is not open to challenge by a fresh suit on the same cause of action as it amounts to an attempt to re-agitate the settled issues.”

16. The said judgments pertains to the fact that a compromise decree is binding upon the parties to the said agreement and such parties can not re-agitate the matter.

17. In this case the plaintiffs are not the parties to the proceedings of OS No. 518/2022 which ended in compromise. As such, when the plaintiffs are not the



parties to the compromise petition, it cannot be held that the issue involving the plaintiffs is decided in the said suit. Hence, the above observations relied on by the counsel for the defendants is not applicable to the facts of hand.

- 18.** At this juncture I would like to place reliance on the judgement of Hon'ble Supreme Court of India reported in AIR 2004 SC 2186 between ESCORTS FARMS LTD., PREVIOUSLY KNOWN AS ESCORTS FARMS (RAMGARH) LTD., V/s COMMISSIONER, KUMAON DIVISION, NAINITAL, U.P. Wherein it is held that "Res-Judicata is a plea available in Civil Proceedings in accordance with section 11. It is a doctrine applied to give finality to 'lis' in original or appellate proceedings. The doctrine in substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and reargued twice over. The literal meaning of *Res* is 'everything that may form an object of rights and includes an object, subject matter or status' and *Res-Judicata*



literally means a matter adjudged, a thing judicially acted upon or decided, a thing or matter settled by judgment. Section 11 engrafts this doctrine with a purpose that a final judgment rendered by a Court of competent jurisdiction on merits is conclusive as to the rights of the parties and their privies and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

- 19.** In the object of said observation of the Hon'ble Supreme Court of India, it is necessary to examine if the present suit is covered under Res-Judicata in view of compromise of OS No. 518/2022 on the file of Addl. Civil Judge and JMFC, Kunigal.
- 20.** No doubt the said court was a competent court to accept the compromise in OS No. 518/2022 involving the present suit schedule properties but first and foremost, the plaintiffs are not the parties to the said suit which shows that the issues involving the present plaintiffs are not



decided in the said suit.

- 21.** Next Point is that, as contended by the plaintiff, the present suit is filed on 02.07.2022 and OS No. 518/2022 was filed on 11.08.2022. Considering the said dates, the present suit is the former suit and OS No. 518/2022 is the subsequent suit. Just because the suit in OS No. 518/2022 was closed earlier, it will not become the former suit.
- 22.** Further, it is specific to mention that as per the order sheet of this suit, after filing of this suit when the matter was pending for appearance of defendant No. 1 to 3 in between 02.07.2022 to 03.02.2023, the defendant No. 2 appeared through his counsel on 07.09.2022 and the defendant No. 1 and 3 appeared through their counsel on 03.02.2023. When the said dates are compared with the order sheet of OS No. 518/2022, it is seen that the present defendant No. 2 filed the said suit on 11.08.2022 which



shows that the said suit was filed after he received the summons of this suit, thereafter the present defendant No. 1 to 3 entered in to compromise on 13.08.2022. The said facts clearly depict that the present defendant No. 1 to 3 entered into compromise in the said suit after filing of this suit.

23. The said facts clearly shows that though the Court of competent jurisdiction in OS No. 518/2022 accepted the compromise entered into by the present defendant No. 1 to 3, the rights of the present plaintiff are not adjudicated in the said suit. As the present suit is former suit, principle of Res-Judicata cannot be attracted. That apart , the dates of filing of suit and compromise in OS No. 518/2022 shows that the said suit which is filed after filing of the present suit was with the sole intention to defeat the rights of the present plaintiffs.

24. Further, under the present application though the



defendants sought for dismissal of suit also under Order 7 Rule 11 (d) of CPC, same cannot be accepted as principles governing rejection of plaint provides that the defense of the defendants can not be considered and only the plaint averements should by looked into while disposing the said application and same is not the principles for considering application Under Section 11 of CPC as the Court has to look into the materials produced by the defendants to see if the present suit is hit by principles of Res-judicata. Hence, the present application is considered to an extant of Section 11 of CPC and not Under Order 7 Rule 11(d) of CPC. In the facts and circumstances afore mentioned, this court is of the opinion that the present suit is not hit by the principles of Res-Judicata. Accordingly, point No.1 is answered **in the Negative.**

- 25. Point No.2:** In view of above made discussions, I proceed to pass the following;



ORDER

***I.A. No. III filed by the defendant
No.2 under Order 7 Rule 11(d) read
with Section 11 of CPC is hereby
dismissed with cost of Rs . 500/-.***

(Directly dictated to the stenographer on the computer,
printed through steno, corrected by me and then
pronounced in the open court on this the **14th day of
December 2023**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi.