

**ORDER BELOW EXH. 34 IN REGULAR CIVIL SUIT
NO. 351/2015.**

1] The defendant Nos. 3 to 5 have filed present application for rejection of the plaint under O. 7, R. 11(d) read with Sec. 11 of C.P.C. The case of defendant Nos. 3 to 5 in short can be stated as follows:

The plaintiffs have filed this suit for declaration, partition and possession. In between present plaintiffs, defendant Nos. 1 and 2 and defendant Nos. 3 to 5 R.C.S. No. 13/1963, R.C.S. No. 40/1980, R.C.S. No. 19/1981, R.C.S. No. 271/1981 and R.C.S. No. 1/1987 were filed for the reliefs of partition, possession and perpetual injunction. All the suits were decided on its own merits and the rights of plaintiffs and defendants were settled in the said suits. The defendant Nos. 3 to 5 and their father had filed R.C.A. No. 414/2004 against plaintiffs and defendant Nos. 1 and 2. The said appeal was decided on 10/12/2012. Since the issue regarding ownership of the property has been already decided in between the predecessor of the plaintiffs and defendants, the present suit is not maintainable. The plaintiffs and defendant Nos. 1 and 2 have knowledge of the above facts. They however, filed present suit by suppressing those facts. Hence, the application.

2] The plaintiffs have filed say on same application and contested the application. The contentions of plaintiffs in their say, in short, can be stated as follows :

The application is illegal. The issues framed in the suits mentioned in the application and the issues framed in the present suit are different. There is no order denying the right of the plaintiffs in previously instituted the suit. Therefore, the rights of the plaintiffs over suit property are intact. The present suit has been filed for the reasons

mentioned in the plaint. The defendants cannot restrained the plaintiffs from their legal rights. The plaintiffs have, therefore, prayed for rejection of application.

3] Heard the learned Advocate for both the parties. Perused the plaint and documents placed on record.

4] The defendant Nos. 3 to 5 have filed copies of decree passed in R.C.S. No. 40/1979, 29/1981, 271/1981, 1/1987 and R.C.A. No. 414/2004 at Exh. 37/1 to 37/6.

5] To decide present application, it is necessary to peruse contents of plaint, the reliefs claimed in the present plaint and the contents of the plaint filed in R.C.S. No. 13/1963, R.C.S. No. 40/1980, R.C.S. No. 19/1981, R.C.S. No. 271/1981 and R.C.S. No. 1/1987 and relief claimed therein, the issues framed in R.C.S. No. 13/1963, R.C.S. No. 40/1980, R.C.S. No. 19/1981, R.C.S. No. 271/1981 and R.C.S. No. 1/1987 and in present suit, the names of the parties or parties through whom they claimed and that whether the issues were adjudicated and finally decided by a Court competent to try subsequent suit. To adjudicate present application it is necessary to take into consideration the pleadings, issues and decision in the previous suit. In view of the settled and guiding principles for deciding an application under O. 7, R. 11 (d) on the ground that a suit is barred by res-judicata such a plea of res-judicata will beyond the scope of O. 7, R. 11 (d), where only the statements in the plaint will have to be perused. Hence, to consider the plea of res-judicata as raised in present application the consideration of the pleadings, issues and decision in R.C.S. No. 13/1963, R.C.S. No. 40/1980, R.C.S. No. 19/1981, R.C.S. No. 271/1981

and R.C.S. No. 1/1987 is required. Such a plea is beyond the scope of O. 7, R. 11(D) of C.P.C. because to consider such a plea of res-judicata only statements in the plaint will have to be perused.

6] In view of said facts and guiding principles the application is liable to be rejected. Hence, the following order is passed.

O R D E R

1. The application at Exh. 34 is rejected.
2. Costs in cause.

(Dictated and pronounced in open Court.)

Shrigonda.
Date : 08/03/2022.

(G. M. Sadhale)
Civil Judge, Senior Division,
Shrigonda.