



R.C.S. No. 35/2025
(MHAK110011182025)
Manoj Vs. Kusum

ORDER BELOW EXH. 9

This is an application filed by defendant under Order VII, Rule 11 of the Code of Civil Procedure, praying rejection of plaint.

2. It is submitted that plaintiff has filed this suit for seeking declaration and injunction against defendant. Prior to present suit, the defendant had filed suit against the plaintiff bearing R.C.S. No. 62/2012 in respect of same suit property. The said suit was dismissed and appeal preferred against said judgment and decree is bearing R.C.A. No. 44/2024 is pending before the Hon'ble District Court, Akot. It is submitted that in earlier suit, the plaintiff had not filed any counter-claim in respect of his claim over the suit property and despite pendency of appeal in respect of same suit property, plaintiff has filed present suit, which being barred by the principle of *res judicata*. Hence, plaint is liable for rejection, as per Order VII, Rule 11(d) of C.P.C.

3. Application is opposed by plaintiff by submitting say at Exh. 9. He submitted that prior to the suit, he had no occasion to file suit in respect of the suit property and hence, counter-claim was not filed in the earlier suit. After dismissal of suit, the defendant being aggrieved by the said order, is disturbing his possession and hence, cause of action has arose to file present suit. The plaintiff therefore, submitted that the ground raised by the defendant being not tenable for rejection of plaint, application be rejected with costs.

4. I have gone through the submissions on either side. I have also perused the plaint, the documents annexed thereto, and the application in question.

5. At the outset, it is well settled that while considering an application under Order VII Rule 11 of C.P.C., the Court is required to look only into the averments made in the plaint and the documents relied upon by the plaintiff. The defence raised by the defendant or the disputed questions of fact cannot be considered at this stage. The only question to be examined is whether, on a meaningful reading of the plaint, it discloses a cause of action or whether the suit is barred by law.

6. In the present case, it is contention of the defendant that prior to this suit, defendant had filed suit in respect of same suit property and after its dismissal, appeal is pending before the Hon'ble District Court, Akot and hence, during pendency of said appeal, the present suit is not tenable. It is contention of the defendant that in the earlier suit, the plaintiff did not file counter-claim and hence, now he cannot agitate any claim in respect of suit property by way of separate suit. However, at the outset, it is pertinent to observe that the *res judicata* is mixed question of law and fact and therefore, same cannot be decided at the preliminary stage without affording the parties to lead evidence.

7. Moreover, it is necessary to observe that merely for the reason that appeal preferred by the defendant in respect of the suit property is pending, it does not imply that the suit in respect of same property would not be tenable. Although, the plaintiff is assumed to be party to the said appeal, if he has a legal cause of action to agitate

claim and relief in respect of same suit property, he is entitled to file suit. Furthermore, only for the reason that in earlier suit, the plaintiff did not file counter-claim, is not the valid ground for rejecting the plaint. It is contended by the plaintiff that prior to present suit, he had no cause of action or occasion to file suit and hence, for not filing counter-claim in the earlier suit, plaint cannot be rejected being barred by the principle of *res judicata*. Hence, for my aforesaid observations, I find that application is not maintainable and hence, I pass following order,

ORDER

Application is rejected.

Date : 07.04.2026
Telhara

(R. K. Deshpande)
Civil Judge Junior Division,
Telhara.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original.

Name of Stenographer	: S. M. Jagtap
Court Name	: R.K. Deshpande, C.J.J.D.& J.M.F.C, Telhara
Date	: 07.04.2026.
Signed by presiding officer on	: 07.04.2026.
Uploaded on	: 07.04.2026.