

Order passed below Exh.31 in R.C.S.no. 94/2012
(Dated 13/07/2016)

Applicant/defendant no.1 has filed this application under Section 11 of the Code of Civil Procedure. It is prayed by the applicant/defendant no.1 that suit is bared as per principle of the Res-judicata. Read the application and say given by plaintiffs vide Exh.32. Heard both sides at length. Perused entire documents.

2. It is contention of applicant/defendant no.1 that the plaintiffs have filed this suit for partition and separate possession in respect of suit property bearing field gat no. 197/2 area 81 R of mouza Warud-2. However, defendant no.1 has filed suit in respect of the same property before this court bearing no.R.C.S.No.84/1997 for declaration and permanent injunction. It is contention of defendant no.1 that he had filed said suit on the basis of partition-deed, in which Chandrakala Gopal Wankhade i.e. husband of plaintiff no.1 and defendant no.3 Smt.Lalita Bhore were excluded in the said partition -deed. It is further contention of defendant no.1 that said suit was decreed by this court by judgment on 02/01/2009. The appeal against the said judgment was decided by the District Court on 03/03/2014. Thereafter, defendant no.1 preferred second appeal bearing no. 195/2014 before the Hon'ble High Court. In the said appeal, interim order is passed in favour of defendant no.1.

3. It is further contention of applicant/defendant no.1 that plaintiffs have filed this suit being legal heirs of his sister Chandrakala. This suit is filed in collusion with defendant no.3 in order to frustrate the decree in their suit. Therefore, it is prayed by the applicant/defendant

no.1 that suit is barred as per principle of the Res-judicata vide Section 11 of the Code of Civil Procedure.

4. Plaintiffs have strongly opposed this application. It is contended by the plaintiffs that application is not tenable by law because in earlier suit plaintiffs were not made as party. Therefore, the decision in the earlier suit is not binding upon them. The earlier suit was of different title. Therefore, it is prayed by the plaintiffs that application be rejected with costs.

5. Upon rival contentions, following points arise for my consideration and I am reproducing the same alongwith my reasons mentioned there under :-

<u>Sr. No.</u>	<u>POINTS.</u>	<u>FINDINGS.</u>
(i)	Whether suit is barred by the principle of Res-judicata?	In the negative.
(ii)	What order?	As per final order.

REASONS FOR FINDINGS

AS TO POINT NO. 1:-

6. Upon perusal of the certified copy of judgment in the earlier suit i.e. R.C.S.No.84/1997, it is seen that defendant no.1 has filed that suit against his brother Prakash i.e.defendant no.2. Admittedly, mother

of plaintiff no.2 to 5, was not made party in that suit. It is contended by the plaintiffs that in the partition-deed wife of plaintiff no.1 and mother of plaintiff no.2 to 5 i.e. Chandrakala and Sau.Lalita i.e. sisters of defendant no.1 were not made party because they were already provided marriage expenses and 'Choli Bangadi' expenses. Upon perusal of the earlier suit, it is seen that applicant/defendant no.1 filed the same suit for declaration and permanent injunction. On the other hand, plaintiffs have come with case that they have share in the suit property and therefore, suit is regarding partition and separate possession.

7. Second 11 of the Code of Civil Procedure read 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."*

8. In earlier suit parties were different. Plaintiffs have not made party in that suit. Moreover, the issue in earlier suit was different from the present suit. Admittedly, Chandrakala and Lalita Bhore were not made party in that suit. Applicant/defendant no.1 has admittedly relationship between the parties. Applicant/defendant no.1 has not filed any document to show that Chandrakala and Lalita Bhore had

relinquished their right in the suit property. Moreover, said partition-deed is under challenge in before appellate court. Therefore, in my opinion, ingredients of Section 11 of the Code of Civil Procedure are not satisfied in this case. Hence, application liable to be rejected. Therefore, I answer point no.1 in negative.

AS TO POINT NO. 2 :-

9. In view of discussion made above, I have already concluded that application deserves to be rejected. Consequently, in answer to point No.2, I pass the following order :-

ORDER

- (i). Application (Exhibit No.31) stands rejected.
- (ii). Cost in main cause.

Dt: 13 July, 2016.

(N. K. Joshi)
Jt.Civil Judge (J.D.)
Warud.

