

MHAU100006532023



R.C.S./55/2023
Vijay Vs. Sheku

ORDER BELOW EXH.27

01. The defendant no. 3 to 6 filed application under order 7 rule 11 of C.P.C. for rejection of plaint. Wherein it is submitted that the plaintiff before filed Civil Suit bearing no. 377/1997 for perpetual injunction but the said suit was dismissed. No appeal was filed against the said order.

02. It is further submitted that the plaintiff has taken aid of civil suit no.03/2010, but the present suit is barred by law of limitation. It is further submitted that the prayer, subject matter and parties are same in the Civil Suit no. 377/1997. Hence, prayed to allow the application.

03. On the contrary plaintiff has filed say to the said application and opposed the application. It is submitted that the plaintiff filed suit for perpetual injunction on different cause of action. It is further submitted that the defendant no. 3 to 6 are not the defendants in civil suit no. 377/1997. Therefore, the re-judicata is not applicable. Hence prayed to reject the application.

04. Heard respective parties. Perused the application, say and record of the case. From perusal of record it shows that the plaintiff has filed the suit for perpetual injunction against the defendants. It is the contention of the defendant no. 3 to 6 that plaintiff has already filed suit bearing no. 377/1997 and the subject matter and the parties are same. It is further contended that the suit is barred by law of limitation. On the contrary, plaintiff contended

that only defendant no. 1 and 2 are parties to the said suit bearing no. 377/1997 and the said suit was dismissed by the Court. Perused the copy of judgment filed in the suit. From perusal of it shows that the father of plaintiff has filed suit against defendant no. 1 and 2. The subject matter of the suit appears to be the same. Further perusal of the record it shows that the plaintiff has filed the suit for perpetual injunction against the defendants.

05. The defendant no. 3 to 6 further contended that the suit is barred by law of limitation. However, the plaintiff in his plaint has mentioned on 07/05/2023 obstructed to the defendants. Therefore, the cause occurred to filed the present suit. The defendant mainly contended about the provision of re-judicata and limitation hit the suit of the plaintiff. However, the plaintiff has filed suit for perpetual injunction against defendants and the contention of the plaintiff required adjudication. The opportunity needs to be given to the plaintiff to prove their contention. The contention of the plaintiff about the re-judicata and suit is barred by law limitation at the time of final argument by keeping the two points open for further adjudication. Therefore, at this stage it is not proper to consider the submission of defendants. Hence I Pass following order.

ORDER

1. Application is rejected.

Date- 25.07.2025

(G. D. Gurnule)
Jt. Civil Judge Jr. Div.
Khulatabad.