

MHKO070019812022 	<u>Order below Exh.12 in</u> <u>Regular Civil Suit No.302/2022.</u> Sikandar Amin Nadaf POA Dauad Sikandar Nadaf Vs. Shahapari Yunus Dange
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This is an application filed by defendant nos. 1 to 5 under Order VII Rule 11 Code of Civil Procedure (hereinafter referred to as ‘the CPC’), for rejection of plaint on the ground of bar of Res-Judicata under section 11 of the CPC and Section 41(h) of Specific Relief Act.

02. The defendants stated that the plaintiff had earlier filed R.C.S. No. 150/2010, which was dismissed on 04/04/2015. In that suit, an issue regarding the possession of the plaintiff was framed, and the finding was recorded in the negative. The Court held that the plaintiff was not in possession of the suit property. The plaintiff has preferred an appeal against that decision. The plaintiff has an option to claim the relief in the said appeal. However, he filed this false suit. Therefore this suit is barred by section section 11 of the CPC and Section 41(h) of Specific Relief Act. Hence, the defendants prayed for the rejection of the plaint.

03. Plaintiff filed his say at Exh. 28 and opposed the present application. He contended that the cause of action and parties in this suit are different. Therefore, Section 11 of CPC is not applicable. Hence, he prayed for rejection of the application.

04. Perused the record. Heard learned advocate for both side. Following are the points for determination along with my findings and reasons thereon.

Sr. No	POINTS	FINDINGS
1)	Whether the suit from the statement in the plaint prima-facie appears to be barred by any law, as prayed by defendants?	No.
2)	What order?	The application is rejected.

REASONS

As to Points No. 1 and 2 –

05. The main contention of the defendants is that the suit is barred by the principle of res-judicata and section 41(h) of Specific relief Act.

06. It is a settled law that, while deciding the application of the rejection of the plaint, the Court has to consider only the

statements made in the plaint and the documents attached to it. The defence taken by the defendants in their written statement or application is not relevant. The pleas and documents filed by the defendants are wholly irrelevant, which must be decided solely on the basis of the plaint.

07. I have perused the plaint. The essential averments in the plaint are that, the plaintiff has filed this suit for perpetual injunction on the ground that the suit property was given to him by Sikander Elahi Aarwade by executing an agreement dated 19/02/1982. On the same day, possession of the suit property was also handed over to the plaintiff. In R.C.S. No. 150/2010, the defendants had contended that they had executed a power of attorney in favour of Kalandar Aarwade, who thereafter transferred the suit property to Shahapari Yunus Dange by executing a Hibbanama. Now, Shahapari Yunus Dange (defendant No.1 herein) along with defendants Nos. 2 to 5 is obstructing the plaintiff's possession. It is further stated that defendant No.1 has also filed an application for electricity and water connection. Therefore, the plaintiff has filed the present suit seeking injunction against defendants Nos. 1 to 5 from obstructing his possession, and also restraining defendants Nos. 6 and 7 from providing electricity and water connection to defendants Nos. 1 to 5.

08. It is needless to mention that the learned advocate for the defendants has placed on record a copy of the judgment and decree in R.C.S. No. 150/2010 (Exh. 36/1 and 36/2). On perusal of the said judgment, it appears that R.C.S. No. 150/2010 was also filed for a perpetual injunction. Though the suit property in both cases is the same, the parties are different. In both suits, the plaintiff claims possession of the suit property on the basis of the agreement dated 19/02/1982. However, in the earlier suit, the plaintiff had sought an injunction against the legal heirs of deceased Ilahi Aarwade, whereas in the present suit, the plaintiff claims that the defendants are obstructing his possession on the basis of a *Hibbanama*. So, the matter in issue in R.C.S. No. 150/2010 is not directly and substantially the same as the issue in the present suit. Moreover, an appeal against the judgment and decree passed in R.C.S. No. 150/2010 is pending before the Hon'ble District Court, jaysingpur. From the order passed below Exh. 11, it also appears that Section 10 of the CPC is not applicable to the present case. Even though the defendants have filed certain documents, those documents cannot be relied upon for deciding the present application.

09. Order VII Rule 11(d) of the CPC provides that a plaint shall be rejected where the suit appears from the statements in the plaint to be barred by any law. Hence, as discussed above, in order

to decide whether the suit is barred by any law, it is the averments in the plaint that must be considered. However, after perusing the plaint, it does not appear at this stage that the matter directly and substantially in issue in the present suit was directly and substantially in issue in the previous suit. It is well settled principle of law that since an adjudication of plea of res-judicata requires consideration of the pleadings, issues and decision in the previous suit, such a plea will be beyond the scope of the Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused. Therefore, this issue cannot be decided at this stage. The Res-judicata in mixed question of fact and law.

10. As far as Section 41(h) of the Specific Relief Act is concerned, Section 41 of the said Act deals with situations where an injunction cannot be granted. It is to be noted that the Specific Relief Act provides only an equitable and remedial relief, it does not create or determine any cause of action. Therefore, a plaint cannot be rejected merely on the ground that the relief sought in the suit may not be granted under the provisions of the Specific Relief Act.

11. Hence in the interest of justice it would not be proper to reject the plaint at this stage. Hence, in view of aforesaid

discussion I am of the opinion that, the plaint can not be rejected under Order VII Rule 11(d) of CPC, on the ground of res-judicata. Accordingly I answer issue no. 1 in **Negative.**

As to Point no. 2-

12) Considering the above discussion and in view of my negative findings as to point no. 1, it is necessary to reject the present application. Hence, in answer to point no. 2, I proceed to pass following order -

ORDER

The application at Exh. 12 is rejected with costs.

Jaysingpur

Date : 17/10/2025.

(**M.S.Patil**)

2nd Jt.Civil Judge Jr. Dn.,
Jaysingpur