

MHKO100002012011

REGULAR CIVIL SUIT NO. 39/2011

Saraswati Hazare & Ors.

//Vs//

Subhash Shiledar.

ORDER PASSED BELOW EXH.118

Present application filed by defendant under section 11 of the Civil Procedure Code (the CPC) for dismissing the suit as per law of *res-judicata*. Plaintiffs filed say at Exh.122. Perused application and say. Heard both sides at length.

2. It is contended by defendant that, before filling of present suit, a civil suit bearing Special Civil Suit No.466/1991 was filed before the Civil Court Senior Division, Kolhapur and it was disposed on 30/01/1992 as per compromise between parties. Thereafter, plaintiffs filed suit bearing RCS No. 15/1995 before the Civil Court Junior Division, Gadhinglaj and it was decided on 12/02/1996. Thereafter, plaintiff no.2 filed suit bearing RCS No. 103/1999 before the Civil Court Junior Division, Gadhinglaj for declaration and injunction however, plaintiff in that suit failed to proceed with it, it was dismissed in default. Thus, compromise made between parties to the suit Sp.Civil Suit No. 466/1991 is binding on parties to this suit. Therefore, this suit filed for same reason is not maintainable as per section 11 of the CPC.

3. On the other hand it is contended by plaintiffs that, plaintiffs, sister and mother of their father were not made as a party to the suit bearing Spl. Civil Suit No. 466/1991. Thus, compromise made in that suit is not binding on them. Further, RCS No.15/1995 was filed for

injunction and it was dismissed and RCS No. 103/1999 was dismissed in default. Present suit is filed for partition and plaintiffs were not party to earlier suits. Therefore, provisions of section 11 of the CPC are not applicable to present suit.

4. As per contentions and arguments of both sides, filing and disposal of some suits prior to present suit is admitted fact. Therefore, first of all it is necessary to consider that, in view of earlier suits whether present suit hit by provisions of *res-judicata* as provided under section 11 of the CPC. Section 11 of the CPC provides that, 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 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.

5. From bare perusal of the provisions of section 11 it appears that, law of *res-judicata* applies to subsequent suit if, earlier suit has been heard and finally decided by the Court. Admittedly, earlier suit bearing RCS No.466/1991 was compromised and not heard and finally decided. Therefore, *res-judicata* is not applicable to the present suit as earlier suit bearing RCS No.466/1991 was not heard and finally decided. Further, on perusal of plaint and order passed below Exh.1 in said earlier suit it appears that, said suit was filled by present defendant Subhash Shiledar against his mother and father only. Plaintiffs in this suit being sisters of defendant Subhash Shiledar were not made as party in the

earlier suit. Therefore, parties in former suit and in subsequent suit are not similar as well.

6. Further, on perusal of documents filed in respect of suit bearing RCS No. 15/1995 it appears that, it was filed for perpetual injunction in respect of only some of the suit properties mentioned in this suit. Present suit is filed by plaintiffs for partition of all suit properties. Thus, nature of dispute in former suit was in respect of injunction only and in this suit it is for partition. So also, all suit properties mentioned in present suit were not mentioned in former suit. Therefore, issue in former suit is not directly or substantially an issue in present subsequent suit.

7. Further, admittedly former suit bearing RCS No. 103/1999 was dismissed in default and it was not heard and finally decided. Moreover, said earlier suit was filed by plaintiff no.2 Sanjivani Rajput against defendant Subhash Shiledar and his wife only. So also, said earlier suit was filed for declaration and injunction in respect of only one of the suit properties in present suit. Thus, former suit bearing RCS No.103/1999 was not between same parties, for same properties and it was not heard and finally decided.

8. Ld. Advocate for defendant relied upon following judgments-

1. *U.P. State Road Transport Corporation Vs. State of U.P. and Another, (2005) 1 ACC 51,*
2. *Jadeja Navalsing Mahobatsing & Ors. Vs. Mahesh Govind Trivedi & Ors., 2016(4) Bom.C.R. 800,*

3. *Tarzan Da Costa & Ors. Vs. Mario Cornelio Franciso De Souza & Ors., 2018(1) Bom.C.R. 590,*

4. *Prabhatai Shankarrao Bodhankar & Ors. Vs. Chimote & Sons & Ors., 2017(2) Bom.C.R. 207.*

9. In case of *U.P. State Road Transport Corporation* the Hon'ble Supreme Court observed that, *res-judicata* is based on the need of giving finality to judicial decisions and it applies between two stages in the same litigation. Further, in case of *Jadeja Navalsing Mahobatsing* The Hon'ble Bombay High Court observed that, once claim based on title is rejected by competent Court, subsequent suit for same claim without claiming any other claim as assignee or alike is barred by principle of *res-judicata*. In case of *Tarzan Da Costa* the Hon'ble Bombay High Court observed that, once application for temporary injunction is disposed of in absence of sufficient cause, jurisdiction of said Court cannot be invoked once again to seek same relief by interested parties. Lastly, in case of *Prabhatai Shankarrao Bodhankar* the Hon'ble Bombay High Court observed that, when in earlier litigation execution of sale deed executed by Karta of family was upheld, suit for partition and possession claiming said sale deed executed by Karta as illegal is not maintainable as per law of *res-judicata*.

10. On perusal of observations given in above cited cases it appears that, in former suit if any claim of plaintiff is decided by the competent Court, plaintiff cannot file subsequent suit for the same relief. In present case, plaintiffs are seeking relief of partition in suit properties. Those earlier suits were not in respect of partition of suit properties

between plaintiffs and defendant. Further, though defendant claimed that, compromise decree passed in Spl. Civil Suit No. 466/1991 is binding on plaintiffs. However, said suit was between defendant and his parents only and present plaintiffs were not parties either to suit or compromise. Thus, where earlier suit was not heard and finally decided and plaintiffs were not parties to it, said former suit cannot bar present suit for partition as per law of *res-judicata*. Considering all above facts and circumstances and legal provisions, though all three former suits were filled before the competent Court and those are disposed, present suit is not barred by law of *res-judicata*. Hence, I proceed to pass following order.

ORDER

Application is rejected.

(Dictated and pronounced in open Court)

Gadhinglaj.
Date: 08/11/2023.

Sd/-
(**S. A. Rathod**)
Jt. Civil Judge, Junior Division,
Gadhinglaj.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Patil.
Name of Court	S. A. Rathod, Jt. CJJD & JMFC, Gadhinglaj.
Date of Dictation	08/11/2023
Order signed by P. O. on	08/11/2023
Order uploaded on	08/11/2023