



R. C. S. NO. 159/2025

MHKO11001331-2025

Devgonda Aappaso Pandav Vs.

Ganpati Aappaso Pandav

ORDER BELOW EXH.11

This is an application filed by defendants praying dismissal of suit being not tenable as per section 11 of the Code of Civil Procedure (hereinafter referred "C.P.C." for short).

2. It is submitted by defendants that plaintiffs have filed this suit for perpetual injunction. Hearing before, plaintiffs have filed suit bearing R.C.S. No.121/2025 against defendants in respect of same party and for seeking same relief which was withdrawn. As per section 11 of C.P.C., the present suit being filed in respect of same suit property, between the same parties and the matter in issue in the present suit being directly and substantial in issue in the formal suit which is withdrawn, the present suit is not tenable being barred by the principle of res-judicata, defendants have therefore, prayed for dismissal of suit.

3. Plaintiffs opposed the application. He admitted filing of earlier suit RCS No.121/205 in respect of same suit property, however submitted that the nature of earlier suit, the reliefs claim and cause of action in the earlier suit and present suit are different and hence, principle of res-judicata is not applicable. He further submitted that in the earlier suit, summons were not issued to defendants and to save the suit from technical irregularity, he had withdrawn the suit with liberty to file fresh suit. Hence, he prayed for rejection of application.

4. Heard learned advocate on either side.

5. It is submission of defendants that as plaintiff had filed earlier suit in respect of same suit property and for same relief which is later on withdrawn, the present suit is hit by the provisions of res-judicata. On the contrary, it is submission of the plaintiff that he had

sought leave to file fresh suit and as per his prayer, suit was disposed of as withdrawn in view of his application. It is submission of plaintiff that as suit was disposed of in view of his application, he is entitled to file fresh suit.

6. In view of submission, I have gone through plaint in RCS No. 121/2025. The said suit was filed seeking injunction against defendant No. 1 to 3 in the present suit. On perusal of application Exh.8 and order, it appears that plaintiff had sought permission to file fresh suit and in view of the application, suit was disposed of. Now, on perusal of order below Exh.8 it appears that although it is mentioned that application is partly allowed, however there is no specific order that liberty to file fresh suit is denied. Therefore, it appears that plaintiff has obtained liberty to file fresh suit while withdrawing formal suit RCS No.121/2025.

7. Now, so far as tenability of application is concerned, I find no substance in the submission of defendants that in view of withdrawal of earlier suit, present suit is hit by the provisions of section 11 of C.P.C. It is pertinent to observe that suit RCS No. 121/2025 is not decided on merit but it was withdrawn and therefore on that account to, the present application is not tenable.

8. Learned advocate for plaintiff has submitted that the plea of res judicata is founded on proof of certain facts and then by applying the law to the facts so found. It is therefore necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried. In support of submission, he relied upon judgment in the case of Smt. V. Rajeshwari vs. T. C. Saravanabava (2004) 14 AIC 842 and Srihari Hanumandas Totala vs. Hemant Vithal Kamat AIR 2021 SC 474. I have gone through the observation in the cited judgments. In view of submissions of learned advocate for plaintiff and observation in the cited judgment, in the present suit except this application, defendants have not filed their written statement. As observed cited judgment, it is necessary

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for defendants to laid down foundation for the plea of res-judicata in the pleadings and such issue must be decided after evidence.

9. Consequently merely on the ground that plaintiff had earlier withdrawn suit which was in respect of same suit property and for seeking same relief, the present suit cannot seek to be barred by the provisions of res-judicata as per section 11 of the C.P.C. Hence, I pass the following order,

ORDER

Application is rejected.

Date: 10.08.2026
Peth-Vadgaon

(R. K. Deshpande)
Civil Judge Junior Division,
Peth-Vadgaon