

MHLA110004092022



ORDER BELOW EXH.29 IN
REGULAR CIVIL SUIT NO.850/2022
RAMANAND VS. MAHANANDA & ORS.

1. This is an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short 'C.P.C.') for rejection of plaint.
2. Perused the application and reply thereon. Heard Learned Counsel for the both sides.
3. Ld. Counsel for defendant No.5 submitted that, plaintiff has filed this suit for declaration and injunction. Plaintiff had also filed RCS No.130/1997 for partition and separate possession of his share which was decided on 14/11/2014. Defendant No.4 to 7 had filed Civil Appeal No.70/2014 which is pending. Plaintiff is having knowledge about the said suit. Plaintiff also had filed RCS No.69/2014 which is pending. Therefore, as per the principal of rule of estoppel, plaintiff cannot file this suit as same issues were already decided and also are pending in the previous instituted suit. Hence, it is prayed to reject the plaint.
4. Plaintiff has resisted the application and contended that, the cause of action and relief claimed in in RCS No.130/1997 is different from the present suit. Therefore, it does not operate as res-judicata. There is no pleading in WS regarding the res-judicata. No copy of plaint of the previous suit is filed. The application is not tenable. Hence, it is prayed to reject the application.
5. The following points arise for my determination to which

...2...

I have recorded my findings for the reasons stated as under:

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the suit is barred by law? :	In the Negative.
2)	What order ? :	As Per Final Order.

REASONS

AS TO POINT NO.1 :-

6. Before scrutinizing the plaint and averments, it will be proper to have glance at the settled law regarding the Order VII Rule 11 of the Code of Civil Procedure, 1908. Order VII Rule 11 of the Code of Civil Procedure, 1908, makes it clear that relevant facts which need to be looked into for deciding the application thereunder are the averments in the plaint. The averments in the written statement are immaterial and it is the duty of the court to scrutinize the averments in the plaint. At this stage, pleas taken by the defendant in the written statement are wholly irrelevant while scrutinizing the plaint averments. It is bounden duty of the Court to ascertain the material for cause of action.

7. Ld. Advocate for defendant sought for rejection of the plaint on the ground of doctrine of res-judicata. It is argued that as per the doctrine of res-judicata, no Court will have to try any fresh suit or issue which has been already settled in the former suit. The Court will not try the suits and issues between those parties under whom the same parties are litigating under the same title and the matter already been adjudicated by the Court. Plaintiff has previously filed RCS No.130/1997 which is decided and RCS No.69/2014 which is pending before the Court. Therefore, the doctrine of res-judicata will apply.

8. It is well settled law that a plaint cannot be rejected on the ground of res-judicata under Order VII Rule 11(d) of the C.P.C. This is because of the principle of res-judicata requires and examinations of the pleading, issues and decision in previous suit which is beyond the scope of Order VII Rule 11(d) of the C.P.C. As already stated in abovesaid paras that, Order VII Rule 11(d) of the C.P.C. only considers the statements in the plaint. Therefore, plaint cannot be rejected on the basis of res-judicata. Moreover, the previous suit i.e. RCS No.130/1997 filed by plaintiff for partition and separate possession and this suit is filed by plaintiff for declaration and injunction. Therefore, the cause of actin and relief claimed in both suits are different. Further, defendant No.5 has not filed the copy of plaint in RCS No.69/2014. Therefore, in this circumstances, the principle of res-judicata is not applicable. Hence, the suit is tenable.

9. In view of the aforesaid discussion, I hold that the suit is not barred by law and application is liable to be rejected. Hence, I pass the following order:

ORDER

- 1) Application at Exhibit No.29 is hereby rejected.
- 2) Suit to proceed further.

Nilanga
Dt.:- 23/01/2026

(Smt. V. D. Bhosale)
Jt. Civil Judge Sr. Dn., Nilanga.