

R.C.S.No.273/2012
Narayan -Vs- Dattarao and others

COMMON ORDER BELOW EXHIBIT-11 & 21
(Passed on 22.11.2014)

1. These are applications filed by defendant under Section 11 of the Code of Civil Procedure, 1908, for dismissal of the present suit.

2. The defendant is appearing as party in person. Although there is Vakalatnama filed on record on behalf of defendant, none of the advocate appeared due to adamant behavior of the defendant. Defendant is making submission as party in person since last 2 to 3 dates. He was directed to produce on record copies of plaint and written statement of the previous suit. He has not complied with the directions. Instead, he has filed application Exh. 21 for the same relief knowing that his earlier application is pending. He was asked to take back the application Exh. 21 as his previous application for the same relief is pending. But the defendant adamantly insisted the bench clerk to accept his application. Moreover, it is very difficult for the court to communicate

with the defendant for the reason that he is having very low hearing capacity. Therefore, these applications are taken up for disposal on merit.

3. It is asserted in the application Exh. 11 that the plaintiff had filed RCS No.23/2003 before this court which was decreed on 21/01/2006. An Appeal bearing R.C.A. No.19/2006 preferred by the defendant was allowed by order dated 23/10/2008 of the Hon'ble District Court, Nanded. The Second Appeal preferred by the plaintiff was dismissed before the Hon'ble High Court. The decree passed by the Hon'ble District Court is also maintained by the Hon'ble Supreme Court.

4. The applications are not supported by relevant documents. There is only certified copy of the Judgment dated 23/10/2008 passed by the Hon'ble District Court, Nanded in R.C.A. No. 19/2006. Perusal of the judgment reveals that the suit property in R.C.S. No. 23/2003 was Survey No. 205. However, the suit property in the present

suit is Survey No. 156. There is no material on record to show that the matter directly and substantially in issue in the present suit has been directly and substantially in issue in previous suit and the previous suit has been heard and finally decided by the competent court. Moreover, the defendant in application Exh. 21 has averred that plaintiff has moved to the Hon'ble High Court and he will accept whatever judgment will be passed by the Hon'ble High Court. It goes to show that, the Second Appeal may be pending.

5. Considering all the above circumstances, defendant has failed to satisfy me that the trial of present suit is barred by the principle of *Res-judicata*. Hence, the following order.

ORDER

[i] The applications [Exhibit 11 & 21] are rejected with costs.

Date: 22/11/2014

Sd/-
(V.N.Thakur)
Civil Judge J.D., Hadgaon.

CERTIFICATE

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

Name of the Stenographer : Nagappa Gurapadappa Majage

Court Name : C.J.J.D., Court,
Hadgaon.

Date : 22/11/2014

Order signed by the Presiding Officer on : 22/11/2014

Order uploaded on : 22/11/2014