

R.C.S.No.125/2019
Anna..vrs. Ramdas

ORDER BELOW EXH.15
(Passed on 10th February, 2021)

1] Defendant filed application under Order 7 Rule 11 read with Order 2 Rule 7 of the Code of Civil Procedure. He submitted that suit filed for declaration that sale deed dt.18.3.1975 is not binding and other consequential relief of suit land. In R.C.S. 152/2008 defendant filed suit and Judgment was passed on 30.08.2014. Court had dismissed the suit. Sale deed dt.18.3.1975 is challenged after 45 years, therefore, suit is not within limitation. Plaintiff had not joined the necessary parties, therefore, suit is liable to be rejected. Therefore, preliminary objection is require to be considered and plaint be rejected.

2] Say of plaintiff called on 11.12.2020. Plaintiff and his counsel absent when called repeatedly till 4:30 p.m. Therefore, I proceed against plaintiff without his say.

3] Defendant directly raised the issue of res-judicata in the application and mis-joinder of cause of action. It is settled that issue of res-judicata could not be dealt under Order 7 Rule 11 of C.P.C. Issue of res-judicata is mixed question of facts and law, therefore, trial is necessary. Moreover, as per Order 2 Rule 7 whatever objection had been taken by the plaintiff require to be see in trial.

4] I have taken assistance of the Judgment of Hon'ble Chhatisgarh High Court reported in AIR 2015 Chhatisgarh 170. The Hon'ble High Court relying on Judgment of Hon'ble Apex Court reported in 2002 Vol (2) SCC 85 observed that *“the question of res-judicata is a mixed question of law and fact and if the plea has not been raised by filing pleading and the issue have not been framed, it cannot be held that the defendant had established the plea of res-judicata by raising appropriate pleading.”*

5] Therefore, I am of view that at this stage, application and Order 7 Rule 11 and Order 2 Rule 7 of C.P.C. could not be invoked. Issue is not framed yet. Hence, from discussion above, I pass following order :-

ORDER

Application is rejected.

Umrer.

Dt.10/02/2021