

Order below Exh.40 in R.C.S. No.209/2023
(Kamal & Ors. Vs. Narendrakumar & Ors.)

This is an application filed by the defendant Nos.2 and 3 for rejection of the plaint as the suit is barred by principle of resjudicata. They submits that, the plaintiffs have filed suit for partition and declaration. Earlier the plaintiffs filed Spl.C.S. No.88/2006. The said suit was dismissed on 08.04.2009 to the extent of the suit property in this suit. The property involved in the suit i.e. survey No.99(97) admeasuring 00 H 90 R + Pot Kharab 00 H 12 R was also subject matter of suit in Spl.C.S.No.88/2006. The prayers in this suit and those in Spl.C.S.No.88/2006 are same. The plaintiffs and defendants in both the suit are also same. The earlier suit i.e. Spl.C.S.No.88/2006 has been dismissed after recording evidence. The plaintiffs cannot file the suit for same subject matter. Therefore, they prayed for rejection of the plaint.

2. The plaintiffs resisted the application by filing say and contended that, there is no documentary evidence in respect of the earlier proceeding. The plaint cannot be rejected on the basis of vague allegations. Therefore, the plaintiff prayed for rejection of the application.

3. Heard learned advocate for both sides. Perused record of the case. The plaintiffs namely Kamal Murkute, Nandkumar Murkute and Nalini Ugle have filed this suit for declaration and perpetual injunction. It is settled legal principle that, the application for rejection of the plaint as per Order 7 Rule 11 of

CPC has to be decided as per pleadings in the plaint. Therefore, it is necessary to go through the pleadings in the plaint. The suit is filed for declaration and perpetual injunction. The plaintiffs have sought the declaration that, they have 1/4th share each in the suit property. They have also sought declaration that, mutation entry No.15743 and sale deed executed by defendant No.1 in favour of defendant Nos.2 and 3 on 28.05.1997, as well as sale deed executed by defendant No.2 in favour of defendant No.4 dated 29.08.2015 are not binding on their share. There is no mention of the earlier suit and the decision in the earlier suit. Defendant Nos.2 and 3 filed copy of judgment in Spl.C.S.No.88/2006 wherein plaintiff No.1 and Manisha Tukaram Murkute were the plaintiffs. Tukaram Murkute was defendant No.1, Narendra Tukaram Murkute who is defendant No.1 in the suit was defendant No.2 in the said suit. Plaintiff No.3 in this suit was defendant No.4 in the former suit. Plaintiff No.2 in this suit was defendant No.3 in the former suit. Defendant Nos. 2 and 3 in this suit were defendant Nos.5 and 6 in the former suit. It seems that the said suit was decided exparte against defendant Nos.1 to 4 in that suit. Defendant Nos.5 and 6 contested the said suit. In para 3 of operative order it is specifically mentioned that, the relief in respect of sale deed dated 28.05.1997 was not granted.

4. It is pertinent to note here that, in order to ascertain whether the present suit is barred by resjudicata, it is necessary to see the pleadings in the plaint in the former suit. It is necessary to see whether the issue which is directly and substantially is issue in this suit was also directly and

substantially issue in the former suit. Therefore, it would be proper to frame issue regarding the resjudicata. Accordingly, I pass following order,

ORDER

1. Following issue be framed below Exh.1 :-

“Whether the suit is barred by principles of resjudicata ?”

- 2.** The parties are at liberty to lead documentary evidence, if any.
- 3.** Accordingly this application is disposed of.

Sd/-xxx

Date : 11.03.2025.

**(R. S. Kanade)
Civil Judge S.D., Sinnar.**