

MHPU120002852020 	<u>ORDER PASSED BELOW EXH. 53 IN</u> <u>REGULAR CIVIL SUIT NO.43/2020</u> (Shri.Tulashiram Laxman Bhome Versus Shri. Laxman Rambhau Kadu and others)
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Present application is filed by defendant No.1 to reject the suit as per Section 11 of the Code of Civil Procedure, 1908 (**hereinafter for the sake of brevity referred to as “CPC”**)

02. The defendant contended that the present suit is filed by the plaintiff in respect of survey No.27/3, 27/4 and 27/5 situated at Mauje Talemhaswali, Tal.Bhor Dist.Pune. Further, in present suit the plaintiff prayed that the suit property purchased by him from father of defendant No.1. Accordingly, the plaintiff prayed for perpetual injunction. The defendant contended that suit property bearing No.27/3, 27/4 are ancestral properties of defendant No.1. Accordingly, he has possession in the suit property. After death of his father his name recorded as per Mutation Entry No.229. The plaintiff is not concerned to the suit property. In spite that he obstructed possession of present defendant No.1. Hence, in 2012 present defendant No.1 filed Regular Civil suit and sought injunction that to restrain defendant (present plaintiff) from obstructing his possession. Thereafter, the said suit was decreed. Thereafter, decree passed in aforesaid suit is not challenged before any court. In spite that in present suit the plaintiff prayed to restrain defendant from obstructing his possession and not to create any construction in the suit property. Per contra, as per decree passed in R.C.S. No.195/2012 it appears that present defendant is in possession. Therefore, issue of possession is already decided. Hence, present suit is not tenable. Therefore, present application.

03. The plaintiff resisted the application by filing his say on back leaf of the application. He admitted that previously Regular Civil Suit 195/2012 was decided between the parties. However, in said suit only present plaintiff and defendant No.1 were parties. Per contra, in present suit other defendants are also included as co-defendant. Furthermore, present suit is filed for declaration and injunction. Therefore, present application is not tenable. Hence, he prayed to reject the application.

04. Heard Ld. Advocate for defendant No.1 and plaintiff. They argued in consonance with their respective contentions. In addition to that, Ld. Advocate for the plaintiff relied on judgment of Hon'ble Supreme Court in case of *Grampanchayat of Village Naulakha Versus Ujagar Singh and others (AIR 2000 SUPREME COURT 3272)*.

- REASONS -

05. Present application is filed under Section 11 of the Code. Hence, it needs to decide present application on touchstone of the said provision. In order to constitute res-judicate, the following conditions must be satisfied :

- (i) There must be two suits;
- (ii) The Court which decided the former suit must be competent to try the subsequent suit;
- (iii) The matter directly and substantially in issue must be the same either actually or constructively in both the suits;
- (iv) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in former suits;
- (v) The parties to the suit or the parties under whom they or any of them claim must be the same in both the suits;
- (vi) The parties in both the suit must have litigated under the same title;

06. Further, a literally meaning of “res judicata” is a matter adjudged a thing judicially acted upon or decided; a thing or matter settled by judgments. Hence, in present application it needs to see whether question involved in present suit is already decided by Competent Court.

07. In present suit it is admitted position that R.C.S. No.195/2012 was filed by present defendant No.1 against present plaintiff. However, it is appears that only survey No.27/3 and 27/4 were suit property in said suit. Furthermore, it appears that defendant No.1 B to defendant No.4 were not party to said suit. Copy of judgment passed in said suit is filed by defendant along with list at Exh.56. I have perused the same. After perusal of the issues the Hon’ble court framed issue No.1 in respect of owner and possessor of the suit property. However, in finding the Hon’ble Court only decided possession of the party. It seems that the said suit was filed for simplicitor injunction. Therefore, issue of title was not decided in said suit. Therefore, it cannot be conclude that issue in respect of ownership was finally adjudicated between the parties. Moreover, in Grampanchayat (Supra) Hon’ble Supreme Court held that decision in suit for injunction is not finding on question of title. The dictum laid down by the Hon’ble Supreme Court is squarely applicable to facts of present case. Considering the aforesaid discussion cumulatively it manifests that question of title was not decided in RCS No.195/2012. Hence, same cannot be operate as Res-Judicata. Accordingly, I pass the following order :-

- ORDER -

The application (Exh.53) is rejected.

Date:- 01.10.2025

(S.D.Shirsat)

2nd Jt Civil Judge Jr.Dn.Bhor.

