


CNR No.MHPU130012282024	Reg. Civil Suit No.218 of 2024
	Krushna Dagadu Budhe Versus. Balu Shivram Budhe & Ors.

ORDER BELOW EXH.42.

(Date : 07.03.2026)

Present application is filed by defendant nos.1, 10 and 11 for dismissal of suit under Section 11 of the Code of Civil Procedure. The plaintiff resisted the application by filing say.

2] It has been contended on behalf of defendants that, the suit is false and the given cause of action is not correct. Plaintiff admits that, defendant nos.2 and 3 executed sale-deed dtd.27.07.2012 coupled with possession in favour of defendant nos.1 and 11. That time plaintiff was present with defendant nos.2 and 3. As per decree passed in RCS No.97/2003, which declares 1/3rd share each of plaintiff and defendant nos.2 and 3, mutation was effected. Therefore, plaintiff has right to plead only in respect of 1/3rd share in the property. The plaintiff took advice and time to time filed several applications. Defendant no.1 filed criminal complaint against defendant nos.2 and 3, who sold property to Dumbare. The present defendant nos.1 and 11 had filed suit bearing Spl.C.S. No.490/2014 in the Court of Civil Judge Senior Division, Pune, which came to be decreed and sale-deed of present defendants has been legalized and defendants are restrained from causing obstruction over the possession of purchased property. The plaintiff is well aware about the said decree. The Spl.C.S. No. 111/2023 filed by defendant no.2 and 3 came to be rejected. Therefore, decisions passed in Spl.C.S. No.490/2014 and Spl.C.S. No.111/2023 are binding upon plaintiff, defendant nos.2 and 3. If the plaintiff is aggrieved by the said decisions, he has to file the

appeal against the said decisions. Despite this fact, plaintiff has filed the present suit. In such circumstances, it would not be proper to conduct the trial of present suit. Hence, prayed for dismissal of the suit.

3] On the other hand, plaintiff filed his say at Exh.43 and resisted the application. According to him, though it is mentioned that the application is on behalf of defendant nos.1, 10 and 11, it bears the signature of defendant no.1 only. The earlier application filed by the defendants vide Exh.32 on same cause came to be rejected. The defendant by filing this application trying to establish his possession in the suit property forcibly. The defendants has not considered the fact that the appeal was pending before the Hon'ble District Court, Pune till 2022. The defendants are required to prove that defendant nos.2 and 3 has filed Spl.C.S. No.111/2023. The said suit and present suit are for different reliefs. The present application filed to prolong the hearing of application at Exh.5 and to got enter the name over revenue record. The application is filed to harass the plaintiff. Hence, prayed to reject the application.

4] Perused the application, say and plaint. Though it is mentioned that the present application filed on behalf of defendant nos.1, 10 and 11, it bears signature of defendant no.1 only. Therefore, the application can be considered of defendant no.1. The defendant no.1 has filed this application under Section 11 of the Code of Civil Procedure. Section 11 of the Code of Civil Procedure, deals with the principle of res-judicata, which prevents a Court from trying a suit or issue that has already been decided in a previous suit between the same parties. Essentially, it prevents re-litigation of the same matter, ensuring finality in legal proceedings. The Section 11 embodies that once a matter is finally

decided by competent Court, no party can be permitted to reopen it in a subsequent litigation. It serves to prevent multiplicity of proceeding and to protect parties from being vexed twice for the same cause. To apply the principle of res-judicata, the matter in the subsequent suit must be directly or substantially same in the former suit. The former suit must be between the same parties or between parties under whom they are any of them claim or litigating under the same title. The parties must be litigating under the same title in both former and subsequent suit. The Court which has decided the former suit must have had jurisdiction to try the subsequent suit or the suit in which the issue has been raised and lastly the matter in issue must have been heard and finally decided by earlier Court.

5] According to the defendant, Spl.C.S. No.111/2023 and Spl.C.S. No.490/2014 has been decided, because of which the present suit is barred by the principle of res-judicata. The defendant has filed the copy of judgment and decree passed in Spl.C.S. No.490/2014. On perusal of said decree it appears that, that suit was filed by present defendant nos.1 and 11 against present defendant nos.2, 3, heirs of deceased Sanjay Maruti Labade and Ashok Vithoba Dumbre for cancellation of sale-deed and perpetual injunction. The said suit decreed on 14.12.2016, whereby the sale-deed executed on 27.09.2012 is cancelled and defendants or any person claiming through them are perpetually restrained from causing obstruction to possession of present defendant no.1 and 11 over the suit property. It also appears that, the suit properties in the present suit and in Spl.C.S. No.490/2014 are similar. The defendant has also filed the copy of order passed below Exh.26 in Spl.C.S. No.111/2023. On perusal of said order it

reveals that, present defendant nos.2 and 3 had filed that suit for cancellation of sale-deed dtd.27.07.2012 executed in favour of present defendant nos.1 and 11. The said suit came to be rejected as the suit does not disclose the cause of action and barred by law of limitation on 15.02.2025. This shows that, the said suit rejected as per the Order VII Rule 11 of the Code of Civil Procedure. Both the copies of Spl.C.S. No.490/2014 and Spl.C.S. No.111/2023 shows that, the present plaintiff was not party in these suits. The Spl.C.S. No.111/2023 dismissed summarily. Though the Spl.C.S. No.490/2014 decreed and defendant nos.1 and 11 got the perpetual injunction against the defendants in that suit, the present plaintiff appears to be not party in that suit. The decree of perpetual injunction is primarily binding upon defendants, their legal representatives and their successors in interest. Therefore, the question arises whether the decree passed in former suit which has already been decided in which the plaintiff is not party binds the plaintiff. The answer would certainly be in the negative. Therefore, the primary condition to apply res-judicata does not fulfill.

6] Moreover, on rival pleadings of the parties it appears that, RCS No.97/2003 filed by present defendant nos.2 and 3 came to be decreed wherein it is declared that present plaintiff, defendant nos.2 and 3 have 1/3rd share each in the suit properties. However, the plaintiff in the present suit come with the specific case that though the preliminary decree passed in RCS No. 97/2003, the partition has not yet been effected as per Section 54 of the Code of Civil Procedure. On the contrary, present defendant nos.1 and 10 claiming separate possession over purchased area. Whether the plaintiff was present with defendant nos.2 and 3 at the time of execution of sale-deed dtd.27.07.2012 is a matter of

trial. The plaintiff was not party in Spl.C.S. No.490/2014. It is to be noted that, the issue of res-judicata is mixed question of law and facts, which should be decided after recording evidence of the parties. The dispute raised by the defendant no.1 by way of present application required adjudication after evidence. It is settled law that, court to pronounce judgment on all issues raised before it. However, in case where the issue of both law and fact are arise in the suit and court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if it relates to jurisdiction or bar to the suit created by law for the time in force. However, the issue of res-judicata is mixed question of law and facts depending upon the pleadings of the parties and the party to the suit. It is not a plea of law alone or which bars the jurisdiction of the court. To decide the issue of res-judicata the parties are required to lead evidence. It cannot be decided summarily. On perusal of the written statement filed by the defendant nos.1, 10 and 11 it appears that, they have not taken the plea of res-judicata in their defence. In such situation, they cannot raise the dispute regarding the plea which has not been taken in defence by filing the application. Besides this the issue of res-judicata will have to be decided after the evidence. Considering the above discussion, the application is not tenable in the eyes of law and hence, liable to rejected. Therefore, I proceed to pass following order :

ORDER

The application is rejected.

[**Tukaram P. Mote**]

Jt. Civil Judge, Junior Division,
Saswad, Dist. Pune.

Date : 07/03/2026.
Place : Saswad.

CERTIFICATE

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

Name of Stenographer	:: Santosh K. Panchal, Stenographer (Grade - III),
Name of the Court	:: Shri. T. P. Mote, Jt. C.J.J.D. & J.M.F.C., Saswad, Dist. Pune
Date of Order	:: 07.03.2026
Order signed by P.O. on	:: 07.03.2026
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