



R.C. S. No. 29/2023  
Prabhakar vs. Madhukar  
CNR No. MHRG090003922023

**ORDER BELOW EXH.23**

01] Through the present application the defendant No.01 has prayed for rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (in short "the CPC").

02] It is submitted by the defendant No.01 that perusal of averments in the paragraph No.02 on the third page of the plaint show that the plaintiff has filed suit in a representative capacity concerning the public drainage. Whereas, he did not comply requirement prescribed under Order I Rule 8 of the CPC. Besides that in the past R.C.S.No.100/89 has been filed against the father of the defendants, which has been decided. Thus, bar of res-judicata to present suit comes in to picture.

03] On the contrary, the plaintiff by filing his say (Exh.24) contended that he has right to release water in the public drainage. Accordingly, he has filed present suit in the individual capacity. Further, the parties as well as subject of the present suit and R.C.S.No.100/89 are totally different. After conducting measurement by the defendant No.01, it was came to light that he has made encroachment on the suit property by constructing latrine and bathroom on the same. There is also possibility of encroachment in the air, as the defendant No.01 has not left necessary space from the boundary as per rules. Due to which his right of enjoyment of the suit property is prejudiced.

04] It is argued by the learned advocate of the defendant No.01 that as per the averments made in written statement concerning bar of Order I Rule 8 of the CPC and as per the principle of res-judicata, they have filed present application. The demand of plaintiff is regarding public

way and drainage. However, he has not made party to the adjoining persons and not complied legal provision. R.C.S.No.100/89 was disposed of as per the compromise entered into by the parties. The responsibility of getting measurement done of the suit property was kept on the shoulder of the plaintiff. However, he has not complied the same. In the supra facts, he prayed for allowing of the application.

05] Contrary, it is argued by the learned advocate of the plaintiff that as per the complaint given by his client and consequent direction of Nagar Parishad, the defendant No.01 measured his property, in which it was found that he encroached on the suit property. The compromise decree in R.C.S.No.100/89 is not a decision on merits. Further, principle of res-judicata will not come into picture as prayers in both the suits were different. Moreover, this Court cannot decide plea of res-judicata at this stage in absence of referring relevant documents of R.C.S.No.100/89. In support of his submission, he relied on the ruling of the Hon'ble Supreme Court in the case of *Srihari Hanumandas Totala Vs. Hemant Vithal Kamath and ors.*, **Civil Appeal No.4665/2021 judgment dated 09.08.2021.** Moreover as per his submission, an individual can also file suit concerning the public drainage. In support of his submission, he relied on the ruling of the Hon'ble Parent High Court in the case of *National Sports Club of India and ... vs. Nandalal Dwarkadas Chhabriya and ... 1997 (3) Bom CR 565.* In the above situation,

he prayed for rejection of the application.

06] Before going further, it is necessary to have a look towards the settled legal proposition while deciding an application for rejection of the plaint. It is the settled legal proposition that while deciding an application for rejection of the plaint the Court can take help only of the averments made in the plaint and documents filed alongwith the same. For that purpose, the Court cannot look into the defence taken by the defendant.

07] The careful reading of the plaint shows that the defendant No.01 while making further construction, made the public way narrower by making house construction towards the western side on said way. Due to which obstruction is causing to the plaintiff and other persons who used said way. Moreover, the defendant No.01 has made public drainage narrower by making construction of his compound wall of east side of house on the public drainage. Further, perusal of reliefs in the plaint also show that the plaintiff has prayed for removal of said encroachment of the defendant No.01 on the public drainage and public way.

08] Now as the plaintiff prayed for removal of encroachment on the public drainage and public way, position of law in that regard needs to be seen. Perusal of the ruling in the case of *National Sports Club of India* (supra) shows specific observations of the **Hon'ble Parent High Court** in the paragraph

No.09. The same are as under.

*"The question is whether one single individual can file a suit to protect his right though he may be expounding a public cause. For example, if a public passage is affected, the person who has a right to pass through that passage may individually file a suit for declaration or injunction, regarding his right to use that passage. He is not bound to file a suit in a representative capacity to protect the interest of entire community.*

*Order 1 Rule 8 C.P.C. nowhere says that one individual cannot file a suit in respect of a right which may happen to be a public right or right affecting many persons."*

09] Perusal of the above observations of the Hon'ble Parent High Court as well as the provision under Order I Rule 8 of the CPC it becomes crystal clear that an individual is having a right to file a suit in respect of a public right. Thus it is seen that bar under Order I Rule 8 of the CPC does not come in to picture in the present suit.

10] Now concerning the bar of res-judicata as raised by the defendant No.01, careful reading of the plaint as well as documents filed alongwith the same are totally silent on the aspect of R.C.S.No.100/89. Recently, the defendant No.01 seen to have filed relevant documents of R.C.S.No.100/89 on record. Be that as it may, perusal of the ruling of the Ho'nble Supreme Court in the case of Srihari Hanumandas Totala (supra) clearly

shows observations as under.

*"Since an adjudication of the plea of res-judicata requires consideration of the pleadings, issues and decision in the previous suit, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."*

11] In the supra position of law, plea of res-judicata raised by the defendant No.01 cannot be entertained. In the supra facts prayer made by the defendant No.01 seen to be not tenable in the eyes of law. Accordingly, I pass the following order.

**ORDER**

01. The application (Exh.23) stands rejected.
02. Both parties to bear their own costs.

Place : Roha.  
Date : 09/10/2023.

(S.S.Mahale)  
Civil Judge Junior Division,  
Roha, Dist. Raigad-Alibag.