

MHRG110004292017



**ORDER BELOW EXH. 13 IN R. C. S. NO. 62/2017**  
**(Passed on 15.07.2022)**

This an application filed by the defendant under order 7 rule 11 (d) of Code of Civil Procedure (For short the Code) For rejection of the Plaint, at suit is barred by law.

2. The defendant has filed Regular Civil Suit No. 56/1981. The trial court had passed Judgment and decree in favour of the present defendant. The trial court had declared the present defendant as a owner of C. T. S. No. 558, 559 and 560 (To the extent of 164 sq. meter in C. T. S. No. 560 only to its northern sides) of village Goregaon and also directed to give possession of encroachment area in C. T. S. No. 560.

3. By aggrieved of this Judgment, the present plaintiff has filed appeal before the Hon'ble District Court, Alibag. The Hon'ble District Court has dismissed the appeal. Thereafter, the present plaintiff preferred second appeal before the Hon'ble High Court. The Hon'ble High Court also dismissed the appeal.

4. The present defendant has filed Regular Darkhast No. 20/2002 for execution of decree passed in Regular Civil Suit No. 56/1981. The present plaintiff has challenged order passed in Regular Darkhast No. 20/2002. The Hon'ble High Court has dismissed the Revision Application.

5. Further, the defendant submitted that, this suit is filed for

declaration and perpetual injunction. The issues in the present suit is already finally adjudicated by the competent court. Hence, principle of res-judicata is applicable. Accordingly, prayed to reject the plaint.

6. On the other hand, the plaintiff filed the say and opposed to the application on grounds that, there was different cause of action for issue in the previous proceeding and different cause of action for the present suit. Hence, the provision of res-judicata is not applicable.

7. At the outset, it is worthwhile to discuss here the following provision and Judgments of the Hon'ble Apex court

**Rejection of plaint** - The plaint shall be rejected in the following cases :—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9.

8. Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

9. It is a clear that, in application is filed under Order VII Rule XI of the Code. Then, the application must be decided within four corners of the plaint. In the present case, the defendant filed application for rejection of plaint under Order VII Rule XI of the Code on the ground of res-judicata.

10. In the case of Shrihari Hanumandas Totala V/s. Hanumant Vithal Kamble and others, Civil Appeal No. 4665/2020, dated 09.08.2021. The Hon'ble division bench of the Hon'ble Apex Court interpreted that, the provisions laid down in Order VII Rule XI of the Code and concept of res-judicata.

11. The Hon'ble Apex Court in the above judgment discussed various earlier decisions and laid down following principles for deciding an application under Order VII Rule XI of the Code

- i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;
- ii) The defence made by the defendant in the suit must not be considered while deciding the

merits of the application;

- iii) To determine whether a suit is barred by res-judicata, it is necessary that,
  - a) The 'previous suit' is decided,
  - b) The issues in the subsequent suit were directly and substantially in issue in the former suit;
  - c) The former suit was between the same parties or parties through whom they claim, litigating under the same title; and
  - d) That these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and
  - e) 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.

12. *In the case of Kamala and others v/s. KT Eshwara Sa and others, Civil Appeal No. 3038 of 2008 dated 19.04.2008. The Hon'ble two Judge benches of Hon'ble Apex Court held that,"the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained".*

13. It is a crystal clear that, res-judicata cannot be a ground for rejection of the plaint under Order VII Rule XI of the Code. An adjudication of the plea of res-judicata requires consideration of the pleadings, issues and decision in previous suit, such plea is beyond scope of Order VII Rule XI of the Code. For reject the plaint on the ground that, the suit is barred by any law, only the averment in the plaint is necessary.

14. In the present case the plaintiffs stated that, there was different cause of action and issues involved in previous suit and there is different cause of action and issues for filing present suit. The issues in the present suit is not finally decided in the previous suit. On other hand the applicant stated that, there is final decision on issues in former proceedings and present suit filed for determination of same issues. Hence, plaint is liable to be reject under Order VII Rule XI of the Code.

15. In the light of aforesaid Judgments of the Hon'ble High Court and the provision mention as above, considering the averments in plaint I am of the opinion that, the principle of res-judicata is not applicable under Order VII Rule XI of the Code in the present. Hence, I pass the following order :

**ORDER**

1. Application Exh. 13 is hereby rejected.
2. Costs in cause.

Mangaon,  
Date : 15.07.2022.

(G. C. Fulzalke)  
Civil Judge Junior Division,  
Mangaon, Dist. Raigad.