

ORDER BELOW EXHIBIT 39 IN REGULAR CIVIL SUIT NO.90/2016
(CNR No.:-MHRG14-000832-2016)

Kisan Gajanan Tandel & Ors. V/s. M/s. Karanja Terminal & Logistic Pvt.Ltd.

1. This application is filed by defendant No. 1 for rejection of plaint on the ground that suit is barred by Law, there is no cause of action & suit barred by the National Green Tribunal.

2. It is contended by defendant No. 1 that, plaintiffs themselves damage the road and to harass defendants filed Application No. 41/2006 before National Green Tribunal against defendants. It is further contended by defendant No. 1 that in said application plaintiffs have stated that for road winding defendants have cutting Mangroves trees and defendants have trying to encroach in plaintiffs land and therefore, plaintiffs prayed to stop road winding work in S.No.420/7 & for stay order against defendants.

3. Defendant No. 1 further contended that plaintiffs have filed application before National Green Tribunal, therefore, suit is not tenable before this Court. Thus, suit is barred by res-judicata. Plaintiffs cannot seek same relief before two forums. National Green Tribunal has ordered to defendant not to make any work in S.No.420/7. Thus, he prayed to reject the plaint.

4. Plaintiffs have filed their say at Exhd.49 & 76 and objected the application on the ground that application is false and frivolous. They contended that National Green Tribunal is not Court. Parties

before National Green Tribunal and before this Court are different. Plaintiffs have claimed different reliefs before National Green Tribunal and this Court. Thus, this suit is not barred by res-judicata. Hence, Plaintiffs prayed for rejection of application.

5. Perused application, say and record of the suit. Heard both sides.

6. From the rival pleadings of the parties, following points are raised for my consideration. I have mentioned the same along with findings and reasons thereof as under :

Sr.No.	Points	Findings
1.	Whether defendant proves that suit is barred by res-judicata ?	In the negative.
2.	What order ?	Application is rejected.

REASONS

7. Plaintiff has have filed certified copy of 7/12 extract of suit property at Exh.4/1, certified copies of mutation entry Nos. 1015, 2416, 2851, 2978, 3909, 4477, 4679 & 4942 at Exh.4/2, certified copy of challan dated 13.06.1994 of 32G amount in respect of suit property at Exh.4/3, photo copy of permission of Grampanchayat Chanaje taken by plaintiffs to construct the house in suit property at Exh.4/4, certified copy of assessment extract of house No.2602 at Exh.4/5, receipts of house tax of House No.2602 for year 1999-2000,

2004-05, 2010-11 & 2015-16 at Exh.4/6, certified copy of 7/12 extract of S.No.418/0 of Chanje at Exh.4/7, certified copy of 7/12 extract of S.No.419/0 of Chanje at Exh.4/8, certified copy of mutation entry No.4060 of Chanje at Exh.4/9, photo copy of measurement map of Chanaje village at Exh.4/10, photo copy of measurement map of suit property at Exh.4/11, certified copy of re-measured map of suit property at Exh.4/12 and other permissions and applications etc.

8. Plaintiffs have also filed photo copy of application given by defendant No. 1 to Deputy Commissioner of Police in respect of police protection at Exh.53/1, photo copy of application Exh.42 of R.C.S.No.01/2006 at Exh.53/2. Plaintiffs also filed photo copy of detail project report of Halcrow Consulting India Private Limited at Exh.66/1, photo copy of report in respect of road of Aakar Abhinav Company at Exh.66/2 & etc.

9. Plaintiffs have also filed photo copy of order dated 12.01.2017 passed in Application No.41/2016 by the National Green Tribunal Western Zone Bench, Pune at Exh.73/1, photo copy of affidavit filed by CIDCO in Application No.41/2016 at Exh.73/2 & other affidavits, application, photographs & C.D. of video recording etc.

AS TO POINT NO.1 :- (Res Judicata)

10. By this application defendants have objected the plaint on the ground that plaint barred by law of res-judicata. As per Section 11 of Code of Civil Procedure, res-judicata is defined as follows -

' No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court '.

12. Thus, the bar of res-judicata will come into plaint where in any former suit any issue which is directly and substantially in issue in second suit has been decided between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Thus, defendants have to show that the issues which are directly and substantially in issue in this suit has been framed in any former suit between same parties and that issues have been decided by competent court. As per statement of defendants plaintiffs have applied before National Green Tribunal. It is not the case of defendants that National Green Tribunal has decided direct and substantial issues raised in this suit. Defendants have not produced and proved any copy of judgment showing that direct and substantial issues raised in this suit are decided by National Green Tribunal. Thus, from perusal of record, it reflects that defendants have failed to prima-facie show that the

issues between plaintiffs and defendants, which are direct and substantial has been decided by any competent court, giving rise to bar of res-judicata to this suit. Thus, I have answered point No. 1 in negative and and for point No.2, proceed to pass the following order.

ORDER

1.	Application is rejected.
2.	Parties to bear their own costs.

Place: Uran.
Date: 05/01/2023.

(Nilesh M. Wali)
Civil Judge Jr.Divn., Uran.