



MHRG160001032021

Order Below Exh.16

Defendants have filed present application under Order 7 Rule 11 of the Code of Civil procedure and requested to reject present suit on the ground that, suit is hit by res-judicata, suit is not within limitation, suit is not maintainable, no proper court fee affixed.

Brief facts of the present application as follows:-

02. It is contended that, Regular Civil Suit no.24/1982 was instituted by the plaintiff and said suit was dismissed by the court by judgment. It is further submitted that, previous suit was decided after complete trial. Therefore, present suit is hit by the res-judicata under section 11 of Civil Procedure Code. It is submitted that, defendants are protected tenant and they paid entire rent amount. Before institution of suit plaintiff has not issued notice under section 108 of Transfer of Property Act. It is further submitted that, suit property C.S.No.157 area 159.69 sq.mt. Received by the grandfather of the defendants. Vaman Karkhanis constructed hut and gave it on rent. They further claimed ownership over the suit property. He further admitted, they have applied for new 'Gharkul Yojana' for construction of two houses under 'Pradhan Mantri Gharkul Awas Yojana'. It is further contended that, value of the suit is more than 5 lakh.

Plaintiff failed to plead relation between plaintiff and defendant. Ingredients of Rent Control Act not appears in the suit. Hence, requested for rejection of plaint.

03. The plaintiff has filed his say at exh.20 and refuted all contentions of defendants. He submitted, application is not legal. Defendants contentions are false. Hence, he requested to reject present application.

04. After considering allegations in application and say filed by the plaintiff following points arises for my consideration. I have recorded my findings and reasons here in after.

Sr.No.	Points	Findings
01.	Whether plaint is hit by res-judicata and liable to be rejected ?	No
02.	Whether suit is liable to be rejected due to no cause of action to institute present suit ?	No
03.	Whether suit is liable to rejected on the cause that, no relation between tenant and landlord pleaded in the plaint ?	No
04.	Whether suit is under valued and not sufficiently stamped ?	No
05.	Whether suit barred by law and liable to be rejected ?	No
06	What order ?	Application is rejected

05. Heard argument of both advocates of both parties. Advocates. Ld.Advocate for the defendants argued that, previous suit between plaintiff and defendants were dismissed by the court in the year 1988. Despite of that, plaintiff instituted present suit and claimed for eviction of the defendants from suit

property. Once the suit has been conclusively decided plaintiff cannot institute suit for eviction against defendant. Therefore, present suit is hit by principal of res-judicata and liable to be rejected.

06. It is further submitted, plaintiff has not pleaded relation between plaintiff and defendants in the suit. No notice under section 108 of Transfer of Property Act issued by the plaintiff. Suit is time barred and it is not maintainable in this form. Present suit is for eviction of tenant thus, valuation computed as 1000/- is wrong. No cause of action to institute present suit. Therefor, plaint is liable to be rejected.

07. Ld.Advocate for the plaintiff argued that, suit property is owned by the plaintiff. Reg.Civil Suit No.24/1985 was dismissed as plaintiff failed to prove rent defaulted by defendants. Consequently, suit was dismissed on the ground that, it is not the monthly tenancy but it is yearly tenancy. Present suit has been instituted due to construction of the defendants. Defendants erected permanent structure. Furthermore, rent agreement was prepared on 27/04/1990. Hence, he requested to reject present application.

08. It is settled that, while considering application under Order 7 Rule 11 of the Code of Civil Procedure Court cannot go beyond pleadings of the parties, therefore, while considering the application needs to taken into consideration pleadings of the plaintiff.

09. The Court needs to take into consideration averments in the plaint and the question raised by the plaintiff. In the case of *Shrihari Hanumandas Totla Vs.Hemant Vittha, Kamat Civil Appeal No.4665/2021 SC decided on 09.08.2021* Hon'ble Apex Court laid down guiding principles for deciding application under Order 7 Rule 11(d) of the Code of Civil Procedure it appears while considering the application of rejection of plaint only the averments in the plaint will have to be considered.

In the case of *Shaktibhog Food Industries Vs. Central Bank of India* Hon'ble Apex Court held that-

“ Under Order 7 Rule 11 of the Code of Civil Procedure few lines or passage from the plaint should not be read in isolation and pleadings and to be as a whole ascertain its true import.”

10. However, considering this aspect this court needs to consider merely pleadings in the case. Considering above referred decisions of Hon'ble Apex Court it appears merely pleading of the plaint necessary to take into consideration while deciding present application.

Point no. 2 :- (Cause of action) :-

11. Furthermore, it is the contention of the defendants no cause of action to institute present suit. It is settled that, cause action is nothing but bundle of facts which compels the person to institute suit.

12. Hon'ble Apex Court in decision of *Manju Bhatia Vs.*

New Delhi Municipal Council AIR 1998 SC 223 it is held that-

“A cause of action in modern law is merely a factual situation the existence of which enables the plaintiff to obtain a remedy from the court and he is not required to head his statement of claim with a description of the branch of the law on which he relies, still less with a description of a particular category (e.g., negligence, trespass, sale) within that branch.”

Considering ratio laid down by the Hon'ble Apex Court, it appears plaintiff has given cause action dated 20/04/2021. It is the contention of the defendants no cause of action has been pleaded in the plaint. However, going through entire pleading it appears plaintiff has pleaded by providing date 20/04/2021 and giving details of incidents which compels him to institute present suit. Thus, it appears plaintiff has given the reason for institution of present suit. As a result not found any merit in contentions raised by the defendant that, suit instituted without cause of action. Thus, answer point no.2 in negative.

Point no.3:- (Relation between landlord and tenant)

13. It is the contention of the defendant, plaintiff has not specifically pleaded relation of landlord and tenant in the suit. In this regard, I found it is better to reproduce some contents of plaint here for brief outlook.

“..... वादीचे पुर्वगामी यांचा मालकीहक्क मान्य करुन त्या सदर मिळकतीत भुईभाडयाने राहात आहेत ही बाब मान्य केली व मालक भाडेकरु नाते मान्य कबूल केले.”

considering the recitals in pleading it appears plaintiff has instituted present suit and pleaded relations between the parties that, they are having a relations between them as a landlord and tenant. Considering contents in suit and considering entire plaint as a whole it appears plaintiff has pleaded relations between both parties. Thus, do not found any merit.

Point no. 4: (Suit under valued and insufficiently stamped)

14. In a suit for recovery of immovable property from a tenant/ lessee, fee computed on the annual rent of the tenanted premises is considered as the value of the suit for the purpose of court fee and to invoke the pecuniary jurisdiction of the Courts.

Section 6 of Maharashtra Court fee act provided how court fee has to be computed, in this regard sub section XII provided for the suit between landlord and tenant.

“(xii)according to the amount of the rent of the immovable property to which the suit refers”. It can be observed no need to compute court fee according to valuation of suit.

15. Considering the sub-section 12 it appears, Court fee has to be computed according to the rent of the immovable property. While considering the computation of court fee plaintiff considers the rent of the premises as Rs. 3/-. Thus, it appears suit has been properly valued and proper court fee has been affixed.

Point Nos. 1 and 5:- (Resjudicata and Barred under law):-

16. It is the contention of defendants present suit is hit by

res-judicata as previously Regular Civil Suit no.24/1982 has been instituted by the plaintiff for eviction of tenant from rented premises and same has been dismissed by this court. Therefore, same suit for eviction of tenant is not maintainable as principal of res-judicata is applicable to present suit. Hence, suit is liable to be rejected.

17. Ld.Advocate for the defendants relied on State of Uttar Pradesh Vs. Nawab Hussain 1977 S.C.R.(3)428, Iftikhar Ahmed and others Vs. Sayed Meharban Ali and others 1974 S.C.R.(3) 64, Pandit M.S.M. Sharma V/s. Dr. Shree Krishna AIR 1960 SC 1186. Duryao and others Vs. The State of U.P. reported in 1962 SCR(1)574. Sukh Moreshwar Yadavrao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) THR. LRS. and others 2022 in live law (SC)802 and Gurdev Singh Vs. Harvinder Singh 2022 Livelaw(SC) 963 it appears above said supra are in respect of res-judicata.

18. Plaintiff has pleaded, Reg.Civil Suit no.24/1982 was dismissed on technical grounds. It is further contended that, deceased Radhika Krushna Sutar executed agreement in favour of deceased Waman Shivram Karkhanis on 27/04/1990 and admitted ownership and admitted to be residing on rent and relation of landlord and tenant. However, considering this aspect, it appears from arguments of both Ld. Advocates previous suit was dismissed. However, present suit has been instituted claim for year rent and for erection of permanent structure in the

suit premises. Thus, it appears previous suit was for the default of rent for the period enumerated in that suit. Whereas present suit has been instituted for eviction of tenant on the ground of contravention of provisions of Rent Control Act due to construction of permanent structure and change in permanent structure. Defendants relied on aforesaid decisions of Hon'ble Apex Court and High Court. It can be observed facts in aforesaid decision are not similar with fact in present suit. Thus, with due respect ratio laid down in those decisions not applicable to present suit. It appears fact-in-issue in present suit is the change in permanent structure whereas fact-in-issue in previous suit was the default in rent. Thus, it appears principle of res-judicata is not applicable to present suit.

19. In this regard, it appears Hon'ble Apex Court in ***Keshav Sood Vs. Kirti Pradeep Sood & ORS. In Civil Appeal No.5841 OF 2023 decided on dated 12.09.2023***

“the plea of res judicata could not have been gone into on an application made by the appellant under Rule 11 of Order VII of CPC. Apart from pleadings in the earlier suit, several other documents which were relied upon by the appellant in his application under Rule 11 of Order VII of CPC were required to be gone into for deciding the issue of res judicata.

5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits. ”

Considering the above referred decision of Hon’ble Apex Court it appears while deciding the application of res-judicata court needs to look into the documents, decision of the previous suit. Whereas while deciding the application under section Order 7 Rule 11 of CPC court merely look into the pleadings of the plaint. Thus, it can be observed res-judicata could not be claimed into the application under Order 7 Rule 11 of the CPC.

20. It is the contention of defendants notice under section 108 of Transfer of property Act is not given by the plaintiff. However, it appears factum requires evidence, at the threshold of the suit it is not just to reject entire suit without considering evidence of both the parties. Thus, do not found any merit in contentions raised by the defendants. Thus answer point nos. 1 and 5 in negative.

Point no. 6:-

21. Already answered point nos. 1 to 5 in negative. Hence, proceed to pass following order:-

:-ORDER:-

Application (Exh.No.16) is rejected.

(Dictated and Pronounced in open Court)

Pali

Date:- 24/07/2024

(R.A.Shivratri)

Civil Judge,Junior Division, Pali