

MHSN090007732013



-: Regular Civil Suit No. 161 of 2013 :-

-: Order below Exh.28 :-

[Raghunath Hari Gaikwad & Anr. V/s. Dadaso Ganpati Gaikwad & Ors.]

The present application is filed by defendants to frame preliminary issue under Section 9A of Code of Civil Procedure.

02. By filing present application it is submitted by the defendants that the plaintiffs have filed present suit for perpetual injunction. Previously, the defendants filed suit bearing R.C.S.No.93/2008 for perpetual injunction and the said suit was decided on merit on 07.06.2011. In the said suit, the suit properties were Gat No.374 and 376 and the dispute was regarding the road. In the present suit the plaintiffs and defendants are the same which were in previous suit. The subject matter of the suit is also the same. The defendants have filed their written-statement on 24.02.2014. In the said written-statement they have mentioned that the suit is hit by principle of res-judicata. Therefore, the preliminary issue regarding res-judicata may be framed.

03. The Ld.Advocate for the plaintiffs filed his say and denied the contents of the application. He submitted that the application is filed without cause of action. The Section 9-A of C.P.C. has been deleted. Therefore, the present application is not tenable. The suit property in R.C.S.No.93/2008 was a different and the relief claimed therein was also different. Therefore, the suit is not hit by the principle of res-judicata. Therefore, the application may be rejected with compensatory costs of Rs.1000/-.

04. Heard both sides. Perused record. After perusal of record it is seen that the present suit is filed for perpetual injunction. It is the contention of defendants that previously defendants had filed suit bearing R.C.S.No.93/2008

wherein subject matter of the suit and the parties were same, which are in the present suit. Therefore, suit is hit by the principle of res-judicata. Therefore, preliminary issue may be framed under Section 9-A of C.P.C. The plaintiffs have filed on record copy of judgment passed in R.C.S.No. 93/2008. After perusal of the same, it is seen that the present defendant no.1 and 2 filed the said suit for perpetual injunction wherein the subject matter of the suit was Gat No.434A and 434B situated at village Shirgaon(Visapur). In the present matter the suit property is Gat No.374 and 376 of village Shirgaon. The suit properties in the both the suits are different. Section 11 of C.P.C. states about the principle of res-judicata. The said principle applies where any suit or issue in which the matter directly or 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 competent Court to try such subsequent suit or the suit in which such issue has been substantially raised and has been heard and finally decided by such Court. In the present case the suit properties were different. Eventhough, the relief was the same, therefore, the suit is not hit by the principle of res-judicata. The defendants have prayed that the preliminary issue under Section 9-A of C.P.C. regarding res-judicata may be framed. The Section 9-A has been deleted with effect from 27.06.2018. Also, the present application is filed after the amendment. Therefore, the prayer made by the defendants cannot be allowed. Hence, I proceed to pass following order.

-: ORDER :-

01. The application is rejected.
02. No order as to costs.

Date : 04.05.2023
Place : Tasgaon.

(Omprakash M. Mali)
Civil Judge, Jr. Division, Tasgaon.

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

Name of the Stenographer	:	U.P.Patil
Court	:	Civil Judge Jr.Dn. and Judicial Magistrate F.C., Tasgaon.
Date	:	04.05.2023
Order signed by the Presiding officer on	:	04.05.2023
Order uploaded on	:	04.05.2023