

**Order Below Exh.16**

1] The present application is filed by defendant no. 1 for framing preliminary issue of res-judicata as per Section 11 of CPC and not to pass any order till decision of said issue.

2] It is contended by the defendant that, she has filed written statement and say. She has also filed say Exh. 14 to the application Exh. 13 of plaintiffs for status-quo in respect of suit property. Defendant no. 1 has taken defence that there is bar of res-judicata to the present suit. Previously, R.C.S. No. 17/2014 and R.C.S. No. 33/2018 filed between same parties, in respect of same properties are decided finally. The Judgment and Decree are yet not canceled. As per decision in R.C.S No. 17/2014 defendant no. 1 is owner and possessor of suit property. Present suit is filed by the plaintiff against Judgment in R.C.S. No. 33/2018. Decree in R.C.S. No. 17/2014 is till today final. All the issues in respect of suit properties are decided in previous suit. Hence, there appears bar of section 11 of CPC. Therefore, it is necessary to frame preliminary issue of res-judicata and to decide it first, till then no further order be passed. Thus, defendant prayed to allow the application.

3] Plaintiffs filed say Exh.19 and contended that, in R.C.S. No. 33/2018 present defendant no. 1 was plaintiff and predecessor of present plaintiff namely Pandurang was defendant no.2. Pandurang died on 26/05/2018 and ex-parte order against him was

passed on 27/06/2018. In spite knowing that Pandurang is dead defendant no.1 not brought said thing to the notice of court. He has not taken LR's of defendant no.2 i.e. Pandurang on record. Therefore, opportunity to contest the suit was not availed to the plaintiffs. Thus, decree in said suit is illegal and not executable. R.C.S.No. 33/2018 was filed for partition and injunction by the defendant no. 1. However, present suit is filed by the plaintiffs for declaration that decree in R.C.S. No. 33/2018 is illegal and not binding on them and for injunction. Thus, prayer in both the suit is different. Hence, there is no bar of section 11 of CPC. On the basis of decree in R.C.S. No. 33/2018 defendant is trying to get possession through Tahasildar. Notice in respect of it is received by the plaintiffs. In order to prolong hearing of Exh. 5, present application is filed by the defendant no.1 deliberately. Thus, plaintiffs prayed to reject the application.

4] Perused application. Say and record. Heard both. Ld. Advocate for plaintiffs as well as defendant no.1 argued in the tune of their contentions. Present application is filed by defendant along with their written statement. Defendants have filed copies of decree in R.C.S. No. 9/2000 and R.C.S. No. 17/2014. It reflects that, R.C.S. No. 9/2000 was filed by Ananda Shamrao Phadtare against his father, brother, sister for partition and on 03/11/2004 said suit was compromised and decreed. R.C.S.No. 17/2014 was filed by Dropadi Patil against Ananda Phadtare and Pandurang Phadtare for declaration, injunction and possession. Said suit is partly decreed on

29/11/2017 and only possession of plaintiff on her share was held. Latter on Dropadi Patil filed R.C.S. No. 33/2018 against Ananda Phadatare and others for partition and injunction. Said suit is decreed on 09/03/2023.

5] No doubt application to frame preliminary issue about res-judicata can be allowed but only if it is pure question of law requiring no evidence. If plea requires detailed evidence and investigation of facts and law or if it involves mixed question of law, it cannot be decided as a preliminary issue. **In Sathyanath and anothers Vs. Sarojmani Livelaw, 2022 SC 458** *wherein Hon'ble Apex Court ruled that an application to frame res-judicata as a preliminary issue under Order 14 Rule 2 of CPC cannot be allowed if it requires recording evidence. If the plea necessitates an analysis of facts to determine if the parties and issues are identical, it must be decided during the final trial, not as a preliminary issue.*

6] Thus on perusal of decree in RCS No. 33/2018 and contentions in present suit, it prima facie appears that though the parties and properties are same but relief claimed is different. Issue involved in present case is different than was in previous suit. It is pleading of plaintiffs that RCS No. 33/2018 was filed by present defendant no.1 and defendant in that suit I.e predecessor of plaintiffs namely Pandurang died on 26/05/2018. By concealing fact of his death and without taking legal heirs on record, defendant taken decree of court. Hence that decree is not binding on present plaintiff.

Factual Contentions of plaintiffs needs to be proved by evidence. There appears mixed question of facts and law which requires detailed evidence to decide this issue. Thus in view of factual as well as legal aspects preliminary issue about res-judicata cannot be framed at this stage. Hence application is liable to be rejected. Resultantly, I proceed to pass following order.

**ORDER**

- 1) The application of defendant no. 1 Exh. 16 stands rejected.
- 2) No order as to costs.

Shirala.  
Date:- 30/03/2026

(V. A. Desai )  
Civil Judge Jr. Dn. Shirala

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RCS No. 12/2026 (Exh.16)  
Pandurang Phadtare Through- Lrs.  
Vs  
Dropadi Sadashiv Patil and others  
MHSN14-000057-2026

## C E R T I F I C A T E

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

Name of the Stenographer : M. S. Gondkar  
Court : C.J.J.D. & J.M.F.C., Shirala  
Date : 30/03/2026  
Order signed by the  
Presiding Officer on : 02/04/2026  
Order uploaded on : 02/04/2026