

**Order below Exh.180.**

This application is filed by defendant No.6 अ to 6 ड for rejection of the suit as regards gat No.161 as the suit is hit by the provisions of res-judicata. Defendant filed affidavit at Exh.181 in support of application. Plaintiff filed say below Exh. 189 and resisted the application.

2. Heard advocate Shri Chaundawar for the defendant No.6 अ to 6 ड, Shri Naiku for the plaintiff and Shri Zambare for the other defendants.

3. Perused the application, say, plaint, written statement and the documents filed at Exh. 193, 197.

4. Today, defendant Nos.1 and 2 filed certified copy of plaint and written statement of RCS No.63/1999 along with list at Exh.197. I have carefully gone through the plaint of present case and the plaint in RCS No.63/1999. After perusing both the plaints it is reveals that the suit property of RCS No.63/1999 and present suit are one and the same. The prayer in the present suit is for partition of the suit property and in 63/99 also for the partition of the suit property. The present plaintiff Latabai, Sharmila, Urmila, Ranjana and Radhika are defendant Nos.3 to 7 in RCS No.63/1999. The issues which were under consideration in the already decided suits are about the nature of the property and right and share of the parties as regards partition. Considering these factual aspects, it seem from the record that RCS No.63/1999 is already decided by the Hon'ble Civil Judge, Senior Division, Pandharpur on 26.09.2009. So, the issue of partition is already decided about the suit property in the previous suit. Then issue as regards to res-judicata is required to be framed in the present suit.

5. My predecessor has already framed issues in the present suit below Exh.28. After going through the record it

reveals that the present suit is earlier suit and RCS No.63/1999 is later suit. But, it is decided prior to present suit. RCS No.63/1999 and the present suit are filed for partition but by the different plaintiff. The plaintiff in RCS No.63/1999 is defendant No.2 in present suit. In such circumstances, as the RCS No.63/1999 is decided already, therefore, the following issue is required to be casted in the issues Exh.28-B. On the contrary, the issue of res-judica is to be decided after giving proper opportunity to the parties to lead evidence on this issue. Therefore, prior to issues framed below Exh.28 and 28-B this issue be decided earlier as per Order 14 Rule 2 sub rule 1 and 2 of the CPC. Hence, I pass the following order :

**: ORDER :**

1. Application is partly allowed.
2. Following issue is added in Issues Exh.28-B.  
1B “Whether the suit is barred as per the provisions of res-judicata ?”
3. As this issue is based upon Law and fact, it be tried prior to other issues as per order 14 rule 2 sub rule 2 of the CPC.

Date:- 15.02.2024

{M.R.Kamat}  
Jt.C.J.J.D., Pandharpur.

**CERTIFICATE**

I affirm that, the contents of this PDF file Judgment/Order are same word to word, as per the original Judgment / Order.

Court	:	Jt. C. J. J. D. Pandharpur.
Name of Stenographer	:	R.M.Gogi.
Date	:	15/02/2024.
Judgment/Order signed by the Presiding Officer on	:	15/02/2024.
Judgment/Order uploaded on	:	15/02/2024