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| MHSO070003812024<br> | <b><u>ORDER ON EXH. 22 IN R.C.S. No.321/2024</u></b><br><b>(Passed on 09<sup>th</sup> April 2026)</b> |
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1. This application is filed by defendants No. 1 to 3 under Order 7 Rule 11 of Civil Procedure Code (hereinafter referred as “CPC” for the sake of convenience). The Plaintiff has filed say on the same application. Heard Advocates for both sides. Perused the record.
2. It is submitted by defendants No.1 to 3 that the plaintiff has filed the present suit for fixation of suit boundaries and declaration in respect of decree passed in R.C.S.No.412/2013 dated 20.11.2015 is not executable and other consequential reliefs. In present suit the defendants No.1 to 3 have filed their written statement vide Exh.14 on 12.09.2024. The present plaintiff did not filed written statement in R.C.S.No.412/2013 and should have prayed for the reliefs sought in this suit. The suit has been decreed and execution petition R.D.No.20/2016 was filed. Possession of encroached area has been given to present defendant No.1 by Court order on 22.04.2024.
3. Present plaintiff and defendants No.4 to 6 had filed Civil M.A.No.113/2016 for condonation of delay in filing appeal against decree passed in R.C.S.No.412/2013. However, this application was dismissed for want of prosecution on 02.12.2023. Thereafter, present suit is filed. Thus, this suit is hit by principle of res-judicata. Hence, suit is liable to be rejected.

4. The plaintiff objected the application stating that the contents in the application are false and frivolous. The suit is not barred by res-judicata. The cause of action in R.C.S.No.412/2013 and present suit are different. To present suit cause of action arose on 20.06.2024 and the defect in measurement is the cause of action. Without joint measurement of suit property, encroached area cannot be brought on record. The defendant is taking possession of the suit property, thus, the suit is legal. The delay condonation application has not been decided on merit, therefore, the principle of res-judicata is not applicable to the present case. Hence, prayed to reject the application.

5. After perusal of application and say filed it can be seen that though the application is filed under the heading of Order VII Rule 11(d) of the CPC, a separate provision for res-judicata under Section 11 of the CPC has been provided. The general principle of law is that once a matter has been determined in a formal proceeding, it should not be open to the parties to re-agitate the matter again and again. Section 11 of CPC recognizes this principle and forbids a Court from trying any suit or issue which is res-judicata, recognizing both cause of action estoppel and issue estoppel. In order to constitute res-judicata the following conditions must be satisfied :-

- a) there must be two suits – one former suit and the other subsequent suit
- b) the court which decided the former suit must be competent to try subsequent suit
- c) the matter directly and substantially in issue must be same either actually or constructively in both the suits

- d) the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in former suit
- e) the parties to the suit or the parties under whom they or any of them claim must be the same in both the suits
- f) the parties in both suits must have litigated under the same title.

6. Thus, while considering the principle under Section 11 of CPC, proceeding of former suit must be perused in order to ascertain whether matter is directly and substantially in issue in former suit is the same in subsequent suit. However, while considering application under Order 7 Rule 11 of CPC, scope is restricted and the Court has to perused only plaint. No other documents can be perused for considering the application of rejection of plaint. Therefore, while adjudication application for rejection of plaint, plea of res-judicata cannot be considered. Res-judicata is an issue to be decided entire and cannot be summarily decided in an application to reject the plaint.

7. Explanation IV provided under Section 11 of CPC provides for principle of constructive res-judicata. It states that *'any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly or substantially in issue in such suit'*. Thus, the ground of defence or attack which ought to have been raised in former suit but, have not been done so, but same being raised in the present/subsequent suit is the matter directly and substantially in issue. Thus, the present suit filed is certainly hit

by principle of constructive res-judicata provided under explanation IV of Section 11 of CPC. It is the case of defendant that present plaintiff had opportunity to take the defence in the former suit but instead of that he has filed present suit agitating the same matter of dispute.

8. In the present suit the matter which directly and substantially in issue is whether the measurement conducted by MR No.3007 and decree passed in R.C.S.No.412/2013 are not executable unless joint measurement of Gat No.289 and 322 has been conducted. In the former suit the matter which was directly and substantially in issue was that whether this plaintiff and other defendants have encroached into Gat No.322 or not. Present defendants relied on measurement conducted by MR No.3007 and proved encroachment committed by then defendants in Gat No.322. Thus, suit was decreed. In former suit present plaintiff could have taken a ground of defence or attack that the alleged measurement map of MR No.3007 is not proper, no joint measurement has been conducted and therefore, defendants No.1 to 3 cannot be put in possession of disputed area. All these facts cannot be summarily assessed and adjudicated. It requires both parties to go through trial and lead their evidence.

9. The Advocate for defendants have relied on judgment of Hon'ble Supreme Court in case of **Barkat Ali & Another Vs. Badri Narain 2008 SCCR 285.** While relying on landmark case of Satyadhyan Ghosal Vs. Smt. Debi AIR 1960 SC941 it is held that the principle of res-judicata applies also as between two stages if

the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding. As the legal point raised by defendants No.1 to 3 in this application applies to two different suits, present ratio is not applicable to the facts in hand as applications at two different stages of the same proceeding is not the dispute in issue.

10. He further relied on case of **Uma Devi & Others Vs. Anand Kumar & Others 2025 SAR Online (SC)361**. In this case the Hon'ble Supreme Court held power of rejection of plaint can be exercised by a Court at any stage of the suit. The relevant fact which needs to be looked into for deciding the application are the averments of the plaint only. If on meaningful reading of plaint, both finds suit manifestly vexatious and meritless or barred by any law, power of rejection should be exercised. If clever drafting of plaint creates illusion of cause of action, Court will nip it in the bud. Underlying object is to prevent unnecessary protraction of proceeding in suits where no cause of action is disclosed or suit is barred by limitation. The ratio is in general applicable to the present case in hand.

11. However, the plea of res-judicata cannot be adjudicated while deciding application for rejection of plaint under Order 7 Rule 11 of the CPC. To determine if suit is barred by res-judicata a court must examine previous judgment and pleadings, which is not permitted under provision of Order 7 Rule

11 of CPC. It requires in depth examination of previous decree in order to ascertain matters directly and substantially in issue. It must be decided during trial and not as a preliminary rejection. Res-judicata at the most can be used as a ground of defence but it is not a ground for rejection of plaint under Order 7 Rule 11 of the CPC. Thus, present application filed by defendants is not maintainable in its present form and therefore, it is liable to be rejected. For the reasons mentioned above, following order is passed.

**ORDER**

1. Application at Exh. 22 is rejected.
2. No order as to costs.

Date:- 09.04.2026.

(Smt. S.S.Raul)  
Jt. Civil Judge Junior Division,  
Pandharpur, Dist. Solapur.

**CERTIFICATE**

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

Name of Steno. :- D.S.Landage, Stenographer (Grade-III)  
Court Name :- Jt.Civil Judge (Jr.Dn.) and J.M.F.C.,  
Pandharpur. Dist. Solapur.  
Date :- 09.04.2026.  
Order signed by the :- 09.04.2026.  
presiding officer on  
Order uploaded on :- 09.04.2026.