

ORDER PASSED BELOW EXH. 61.

This application is filed by the original plaintiff and defendant in counter claim as per Order VII, Rule 11 of C.P.C. to reject the counter claim on the ground of res judicata. Defendant filed say on the application itself.

2. Heard advocate Shri. M. C. Pawar for original plaintiff and advocate Shri. S. T. Kale for defendant.

3. It is submitted by the advocate Shri. Pawar for original plaintiff that, this suit is filed against the order of Tahsildar, Malshiras passed in order No. रस्ता/एस.आर./२२/२०२०, दिनांक ०४/०५/२०२२ as per Sec. 5 (2) of Mamalatdar Courts Act. Pleadings in the counter claim filed by the defendant has already been decided by Tahsildar, Malshiras between the same parties. Hence, pleaded to dismiss the counter claim as it has been already decided by another court.

4. Defendant resisted the application on the ground that, application is not tenable in the eye of law. No any suit filed by defendant presently pending regarding present suit properties. Hence, he prayed to reject the application.

5. Heard both sides. Perused application, say, plaint, written statement and counter claim.

6. It is well settled law that, the principle of res judicata would apply only in cases where the same disputes on the same cause of action were raised by the same parties in a subsequent suit instituted in a court of competent jurisdiction, despite the fact that the same dispute between the same parties had already been decided by the court of competent jurisdiction. By the application of the principle of res judicata, the trial of the subsequent suit is barred, and the suit shall be dismissed. In the case in hand the contentions raised by original plaintiff that Tahsildar has already decided the suit can not be considered because the proceeding before Tahsildar are summary in nature. The revenue authority is not a competent Civil Court and the issue involved in the suit has not been heard and finally decided on merit. Hence, counter claim is not hit by the principles of res judicata. Therefore, application is liable to be rejected. Hence I pass following order.

ORDER

Application Exh 61 is rejected.

Date: 14/06/2023.

(**M. N. Patil**)
4th Jt. Civil Judge J. D.,
Malshiras

CERTIFICATE

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

Name of the Court : 4th Jt. C.J.J.D & J.M.F.C., Malshiras.

Name of Stenographer : Praveen Nagnath Nalla (Grade III)

**Order signed by the
Presiding Officer on** : 14 / 06 / 2023.

Order uploaded on : 23 / 06 / 2023.