

ORDER BELOW EXH. 43 IN R.C.S. NO. 169/2013

01. The defendants have filed this application under the provisions of Order 7 Rule 11 of the C.P.C. for rejection of plaint.

02. The defendants contended that the plaintiffs have filed this suit for declaration and injunction. The plaintiffs have also instituted one suit in Karad Court bearing no. 191/2009 which came to be dismissed. The appeal came to be filed but appeal was also dismissed. The defendants thereafter started construction. The judgment given in R.C.S. 191/2009 attained the finality. The suit property in R.C.S. 191/2009 and suit property in this suit is same. The judgment given in R.C.S. 191/2009 bars this suit as per the principle of res-judicata, therefore, this suit is untenable.

03. The say of the other side came to be invited. The other side filed their say vide Exh. 43 and negated the contention of the defendants. The plaintiffs contended that the Court has settled the issues and trial has been commenced. The application under Order 7 Rule 11 of the C.P.C. is untenable. The contentions of the defendants are vague. The plaint therefore cannot be rejected because the cause of action in the previous suit and this suit is different. The principal of res-judicata is a mixed question of law and fact. The matter in hand involves the question of law and facts. The application is filed with malafide intention and said application is liable to be rejected.

04. In view of rival contentions of the parties following points arise for my determination and I have recorded my findings subject to the reasons as mentioned hereinafter :-

Sr. No.	Points	Findings
1	Whether the suit is barred under the provisions of res-judicata and plaint is liable to be rejected ?	In the negative.
2	What order ?	As per final order.

REASONS

As to point no. 1 and 2 :-

05. The defendants have filed this application under the provisions of Order 7 Rule 11 of C.P.C. It is the contention of the defendants that the plaintiffs had instituted one suit against the defendants for the same relief in Karad Court bearing no. 191/2009 which came to be dismissed. The plaintiffs again instituted this suit for same relief on same ground. The suit is untenable and liable to be rejected as the suit is hit by principle of res-judicata. On the contrary, the defendants submitted that the application is liable to be rejected as the contentions of the defendants are wrong. The plaint cannot be rejected. The cause of action of this suit and previous suit is different. There is mixed question of law and facts in this case. The res-judicata involves question of law or question of law and facts. The res-judicata based on question of law and facts cannot be decided at this stage. The application is malafide and liable to be rejected.

06. In this case, the defendants have filed this application for rejection of plaint under Order 7 Rule 11 of C.P.C, on the ground that the suit is hit by principle of res-judicata. The plea of res-judicata has been taken by the defendants. The defendants does not filed the judgment and pleadings of the previous suit. The pleadings of the previous suit are necessary for deciding the issue of res-judicata. The defendants have filed the xerox copies of pleadings and judgment. The xerox copies cannot be perused for deciding the point of res-judicata. The pleadings and judgment of the previous suit are not on record. It was for the defendants to file certified copies of the pleadings and judgment of the previous suit. The application is defective in this regard.

07. The res-judicata is a mixed question of law and facts. It is always desirable to frame the issue of res-judicata and try the issue. The

decision on the point of res-judicata at the end of trial would be better. In view of facts and circumstances of the case I am of the view that at this stage it is hard to decide whether the suit is hit by the principle of res-judicata. The issue of res-judicata can be decided lateron. The defendants failed to file the certified copy of pleadings and judgment of previous suit on record. Therefore, the application is liable to be rejected. In view of above said discussion I answer to point no. 1 in the negative and in answer to point no. 2, I am inclined to pass following order.

ORDER

1. The application under Order 7 Rule 11 of C.P.C. is hereby rejected.
2. No order as to costs.

Karad.
Date- 07.07.2022

(V. S. Khot)
Civil Judge Senior Division,
Karad.