



ORDER BELOW EXH.17 IN RCS NO.97/2020

The present application is filed by defendant No.3 & 4 for rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

2. Heard learned advocate for the plaintiff Mr. K.D.Bhutkar. Defendant No.3 and 4 failed to argue on the present application despite several opportunities. After hearing argument advanced by learned advocate for the plaintiff and after going through the record, following points arise for my consideration and I record my finding thereon for the reasons mentioned thereunder:-

Sr. No.	POINTS	FINDINGS
1)	Whether the plaint is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908?	No
2)	What order?	The application is rejected.

REASONS

3. It is the contention of defendant No.3 & 4 that the plaintiff has filed present suit against the defendants for perpetual injunction.

The plaintiff had filed suit bearing RCS No.43/2018 regarding the same suit properties against the same defendants. Further, the contentions of the plaintiff and the prayer is also same both the suit. The former suit bearing RCS No.43/2018 is dismissed for default on failure of the plaintiff to take steps. Therefore, the present suit is barred by principle of *res-judicata*. Hence, he prayed that the present application be allowed and the plaint be rejected.

4. On the other hand, it is the contention of the plaintiff that the present application is false and illegal. The suit is not barred by principle of *res-judicata*. The suit bearing RCS No.43/2018 had different cause of action and the present suit has different cause of action. Therefore, the present suit is maintainable. Hence, he prayed that the application be rejected.

AS TO POINT NO.1:-

5. It is settled position of law that while deciding an application under Order VII Rule 11 of the Code of Civil procedure the plaint has to be read in whole along with the documents accompanied with it. It is irrelevant what the defendant is alleging and the Court can not look into the documents filed by the defendants.

6. The plaintiff has filed the present suit for declaration and perpetual injunction. The issue raised by defendant no.3 & 4 regarding principle of *res-judicata*. The suit bearing RCS NO.43/2018 was filed against the same defendants by the plaintiff. However, the plaintiff made contention in the plaint regarding the said suit that it was dismissed for default. The principle of *res-judicata* applies only in case where any suit

or issue in which the matter directly and substantially in issue which has been directly and substantially in issue in a former suit between the same parties in a court competent to try subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

7. In the present case, the former suit was dismissed for default and the matter in issue was not heard and finally decided. Therefore, it can not be said that the present suit is barred by principle of *res-judicata*. In such circumstances, the plaint can not be rejected. Thus, I am of opinion that the plaint is not liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure. Hence, I answer point no.1 in the negative.

AS TO POINT NO.2:-

8. In view of my finding as to point no.1, I hold that the application is liable to be rejected. The suit is at preliminary stage and thus, I am not inclined to impose costs on the defendants. Hence, in answer to point no.2, I pass the following order :-

ORDER

(1) The application (Exh.17) is rejected.

(2) No order as to costs.

Date: 17/12/2024
Koregaon.

(A. A. Pacharne)
Jt. Civil Judge Junior Division,
Koregaon.