

Order below Exh.25 in R.C.S.No.151/12

This application is filed by defendant for framing the preliminary issue.

2. In brief defendant's submission is that, the suit filed by plaintiff is not triable as there is bar for the principle of res-judicata. Previously, plaintiff filed the R.C.S. No.252/1999 regarding the suit property and it had decided on dated 18/06/2005. On that decision appeal preferred by defendant as Reg. Civil Appeal No.199/2005 and it was also decided on dated 20/07/2011. The appeal decided in favour of the defendant. The plaintiff didn't file any appeal on the Judgment and decree of First Appellate Court. The suit was between the same parties regarding the same properties and issue was the same. Considering that aspect this suit is bar by principle of res-judicata. Hence, not tenable and triable by this court. To that respect preliminary issue as " Whether the suit is bar for the principle of res-judicata " be framed. Hence, this application is filed.

3. On this application plaintiff filed his say vide Exh.29. The plaintiff opposed the application on the ground that the relief in previous suit was different in respect of this suit. In previous suit there was relief regarding the injunction only, but in this suit plaintiff claimed all the reliefs. Therefore, the submission of the defendant regarding the principle of res-judicata is not applicable to the suit. At the most this issue could be framed with other issue. Therefore, there is no need to

frame preliminary issue as prayed by defendant at this stage. Hence, application be reject.

4. Heard both the sides on this application. Perused the record. It is admitted fact that, there was previous suit between the parties regarding the property. Considering the nature of the suit and the relief, it is mixed question of facts and law. Therefore, the issue of principle of res-judicata will frame and decide alongwith the other issue. The issue of principle of res-judicata can be decided first. In this suit defendant appear and filed this application without filing their written statement in respect of the plaint. Considering this aspect it will not be proper to hold that the issues are same as per previous suit. Hence, in my view at this stage this application is not tenable. Hence, I pass the following order -

Order

1. The application is rejected.
2. Parties to take note.
3. Both the parties are directed to expedite the trial of the suit.

24/07/2015

(D. H. Dabhade)
Civil Judge J.D., Wai.