

ORDER BELOW EXH.10

(Passed on 17.03.2023)

Defendants no. 1 and 2 have filed an application Under Order VII, Rule 11 (a) (d) and Section 11 of The Code of Civil Procedure for rejection of the plaint on the ground that the plaintiff has not mentioned proper cause of action in the suit and it is barred by the provisions of Mamalatdar Courts Act and barred by the principle of Resjudicata.

2. According to defendants no. 1 and 2 that, the suit of the plaintiff is evasive, false and bogus. Plaintiff has not come in the court with clean hands. Plaintiff suppressed material facts that the suit property is the ancestral property. Plaintiff's prayer is very different than his pleading. They trying to attention of this Court on the contents of para no. 8 mentioned in plaint itself, that Civil Judge Junior Division Seloo passed Judgment in RCS NO. 81/2012 on 29.03.2022 for the same approach way. Defendants contended that the issues involved in this suit is already decided in the previous suit therefore this suit is not tenable as it is hit by the provision of Section 11 of the Code of Civil Procedure.

3. Defendants also submitted that the claim put forth by the plaintiff has not specifically disclosed the cause of action to the suit. As per the contents of the defendants the plaintiff has no right to

institute this suit and this court have no jurisdiction to try the instant suit. Defendants further averred that, the suit of the plaintiff is not tenable and maintainable in the eye of law. Therefore, as per Order VII Rule 11 (a) (d) and Section 11 of The Code of Civil Procedure (Hereinafter called in short **CPC**) suit is liable to be rejected. In this context defendants prayed to reject the suit in view of above provision.

4. Doyen Advocate for the plaintiff filed his say on the back side of the application itself. He submitted that there is no substance in the application made by defendants. As the plaintiff was not made party in the previous suit. Therefore, the principle of res-judicata is not applicable to the instant suit. There is no inconsistency in the pleading of the plaint as alleged in the application. The cause of action is specifically mentioned in the plaint. This application is nothing but to prolong the case. Defendants are wasting the time of the court and do not want to fight the case on merit. Lastly, he submitted that the present application is not maintainable and tenable, it is liable to be rejected with costs.

5. Perused the application and say, Heard Ld. Advocates for both parties. They argued according to their respective pleadings.

6. The following points are taken for discussion. I have recorded the findings along with reasons thereof.

Sr. No.	Points	Finding
1.	Whether the plaint apparently appears to be hit by provisions of Order VII rule 11 (a) and (d) of The Code of Civil Procedure, 1908?	No
2.	Whether the suit is barred by the principle of res-judicata?	No
3.	What Order?	Application Rejected

REASONS

7. Before touching to the merits of the case, I would like to reproduce **Order VII Rule 11 of Code of Civil Procedure. Rejection of plaint: The plaint shall be rejected in the following cases :**

- (a) *Where it does not disclose a cause of action;*
- (b) *Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) *Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply*

the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

- (d) Where the suit appears from the statement in the plaint to be barred by any law;*
- (e) Where it is not filed in duplicate;*
- (f) Where the plaintiff fails to comply sub-rule(2) of rule 9*
- (g) Where the plaintiff fails to comply sub-rule(3) of rule 9*

8. As to points no. 1 and 2 :- It is settled position of law of land that, while deciding question Under Order 7, Rule 11, averments made in the plaint are alone germane. Means, court is required to decide question on the basis of pleadings made in the plaint only. It is not required to be considered the averments mentioned in the application under Order VII, rule 11 and allegations pleaded in the written statement of defendant.

9. On perusal of the plaint, it is seen that the plaintiff specifically mentioned in para no. 12 that the cause of action to the instant suit arose on 12.06.2022 when defendants no 1 and 2 without any right obstructed the bullock cart way of the plaintiff, at point no. C by putting obstacles of woods, thorny trees, fencing wires and stones etc. He also mentioned that the second cause of action arose on 21.06.2022 when he lodged report to police against defendants no. 1 and 2 and thirdly on 27.06.2022 when plaintiff issued legal notice to defendants. According to the plaintiff, the cause of action to file instant suit is continuous.

10. Considering the aspect, it is relevant to go through contents of the plaint. On perusal of the entire plaint, it is seen that plaintiffs specifically mentioned in para no. 12, when the cause of action to the instant suit arose. Considering the pleading of the plaint, it is clearly shows that the plaintiff specifically discloses the proper cause of action to the suit.

11. In **Shakti Bhog Food Industries Ltd Vs. Central Bank of India and another 2020 SCC Online SC 482** the Hon'ble Supreme Court of India in paragraphs 21 and 28 held as under. *“It is well established position that the cause of action for filing a suit would consist of bundle of facts. and few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import.”*

12. It is need to be mentioned here that only the defendants no 1 and 2 are filed this objection. In **Sheela Ram and Another vs. S. K. Trading Company and Others, 2021 SCC Online Bom 864** The Bombay High Court held that, *“a suit can be rejected as a whole against all the defendants and not against some of the defendants.”* No doubt suit can be rejected against some of the defendants if there is no cause of action accrues against them. But in the case in hand there is specific averments in the plaint regarding cause of action. Hence, in my considered view, the application not comes with the purview of any of the ground specified in the provision of Order VII, rule 11 of CPC and it is not tenable in the

eye of law. Hence, I do not find any substance in the averments raised by defendants.

13. Now it is needs to be discuss, whether there is any conflicting pleading raised by the plaintiff and on that count alone plaintiff is liable to be rejected. In order to decide this point, let me specifically mentioned here that the defendants objected that the plaintiff has not made proper prayer as per his pleading. Hence his plaintiff is liable to be rejected. On the other hand, this objection is specifically denied by the plaintiff. He submitted that there is no conflicting pleading made by the plaintiff. Now the question remains to be discussed whether the plaint can be rejected on this point alone. To determine this question, I would like to go through the provision of the Order VII Rule 11. On perusal of this provision the court can be rejected the suit any one or more of the following grounds, if it found that there is no cause of action, the suit is under-valued, plaintiff failed to supply requisite stamp papers, Suit is barred by any law, plaint is not filed in duplicate, the plaintiff fails to comply sub-rule (2) of rule 9, and where the plaintiff fails to comply sub-rule (3) of rule 9.

14. To considering the requisite of the aforesaid provision, the court can reject the plaint, if any of the grounds specified in clauses (a) to (e) are made out. In the case in hand, the objection of defendants is not covered any of the grounds as stated. Considering this aspect, court cannot reject the plaint only on the sole ground that the plaintiff made conflicting pleadings in the plaint. Moreover, I

would like to mentioned here that it is the settled principle of law that the plaintiff is the owner of his plaint, no one has right to say what should have pleaded and prayed by the plaintiff.

15. That the plaintiff also raised the objection that the subject matter of the suit is agricultural field way. The obstruction if any can be removed by using the provision of Section 5 of the Mamlatdar Courts Act. Hence, this court has no jurisdiction to try the suit. There is no substance in the objection of the defendants. Because, there is no embargo in the Mamlatdar courts Act. to restrain the plaintiff from filing the civil court. It is the sweet choice of the plaintiff to choose any one of the Act. Hence this objection is not tenable and liable to be rejected.

16. As the defendant raised one more question that the suit is specifically barred by the principle of res-judicata. Hence it is required to be discussed whether the suit of the plaintiff is liable to be rejected on the ground of res-judicata as mentioned in the objection. Before going to the discussion on this point, it is need to understand, what are the requirements must be proved for applying the principle of res-judicata. Section 11 of the CPC deals with the principle of Res-judicata. It reproduced as under;

Section 11 Res Judicata - No court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a formal suit between the same parties, or between parties under whom they or any of them claim,

litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

17. The defendants no. 1 and 2 raised the objection that the issue involved in the instant suit is already decided by the Civil Judge Junior Division, Seloo in RCS No. 81/2012, on 29.03.2022. According to them, the instant suit is not tenable and it is barred by the principle of res-judicata. Before coming to the conclusion, it is needs to go through the contents of plaint and judgment of previously decided suit i.e RCS No. 81/2012. The copy of the Judgment is filed by the plaintiff along with plaint. The plaintiff has not concealed this fact. He specifically mentioned in plaint para no. 8 that **“the suit way granted to the defendants no. 1 and 2 i.e father and grand-mother of plaintiff. vide judgment passed in RCS No. 81/2012.”** Now it is required to see, whether the formal suit instituted between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

18. On mere perusal of the judgment of the formal suit, it reveals that previous suit filed by this defendants no 1 against the father and grand-mother of this plaintiff. The plaintiff was not claiming under any of them. He was not made a party in the formal suit. It shows that the parties of the formal suit and instant suit are

categorically different. The cause of action of the formal suit is also different from the cause of action of instant suit. Moreover, it is also seen that the issue No. 2 was framed in the formal suit in a fashion that, **whether the defendants prove that they have an easementary right to make use of the suit way?** The Civil court had given affirmative finding of said issue but in the operative part of the judgment, no order passed in that regard in favour of the defendant. Hence it can be said that, though the issue was framed and finding given in affirmative in the formal suit but said issue is not finally decided by the civil court as there is no operative order. On the other hand, it is not the case of defendants that they are not denying the right to way of the plaintiff. The principle of res-judicata would apply only when the lis was inter parties and had attained finality in respect of the issues involved. Moreover, the cause of action to filing the present suit is also deferent than formal suit. Considering this fact and circumstances, as the issue involved in the formal suit, has not attained finality, hence in my opinion the plea of res-judicata is not applicable to the case in hand.

19. The counsel for defendant relied upon the Judgment of Allahabad High Court in the case of Sarala Jogeshwar Prasad Vs. Shyam Behari Lal on 20 May 1965. I go through the entire authority, there was a question before the Hon'ble High Court Allahabad that **whether the finding of the Small cause court in previous suit operates as res judicata in a sub sequent suit filed in a civil court.** On observation of the entire judgment cited supra, It reveals that the Hon'ble high court has only decided the point **whether the**

subsequent court is competent to try such subsequent suit. But In the case in hand, this objection is not raised by the defendant therefore, with due respect I am opine that, the ratio of this citation is not at all applicable to the instant case.

20. In view of the findings recorded in para 8 to 19, I conclude that the suit is not liable to be rejected as prayed by the defendant. Moreover, the provision of the section 11 of the Code of Civil Procedure and the principle of res-judicata is also not applicable to this case. Hence, The application of defendants is meritless and accordingly it is liable to be rejected. Thus, I answered point no. 1 and 2 in negative. In order to finding of the point no. 3, I passed following order.

ORDER

1. The application is rejected with costs.
2. Costs of the application shall be saddled on defendants no. 1 and 2.
3. Both parties are directed to proceed with the case expeditiously.

Dt: 17.03.2023

(S. W. Shegokar.)
Jt. Civil Judge (Jr.Dn.), Seloo.