

MHYA10000-607-2021



ORDER BELOW EXH.29

1. The present application is filed by defendant No.1 to 3 and 10 for dismissing suit under section 11 of the Code of Civil Procedure,1908.
2. Perused record. Heard both the Advocates. Considered their submissions.
3. It is submitted by the learned advocate Mr.Lodha for defendant No.1 to 3 and 10 that, RCS. No. 114/2004 is already decided by the court of civil judge Senior division, Kelpaur with respect to suit property i.e. Nuzul Sheet No. 10 C plot No.34 situated at Gopalkrishna Ward, Pandharkawada, Tq. Kelapur. The issue was directly and substantially same in the former suit as well as the suit was decided between the same parties litigating under the same title. Hence, he prayed for dismissal of the suit on the basis of res judicata.
4. Per contra , the learned advocate for plaintiff Mr. Gilani submitted that the former suit was for partition and separate possession whereas the present suit is filed for declaration and permanent injunction. The cause of action for filing this suit and issues involved in this suit are also different from the former suit. The plaintiff has the right to file the present suit. Lastly, he prayed for rejection of application.
5. On perusal of record it appears that, the present suit is filed for declaration and permanent injunction which is at preliminary stage.It is the submission of defendants that the court of civil judge senior division already passed a decree in RCS. No. 114/2004 and divided shares of parties accordingly. Therefore,

the present suit is barred by *res judicata*.

6. In the present suit, the plaintiffs are claiming to be the owner of the suit property on the basis of property card whereas the defendants are claiming to be the owner on the basis of a decree passed in RCS. No. 114/2004. It involves question of fact and law. The doctrine of *res judicata* is basically conceived in larger public interest and is founded on equity, justice and good conscience. Therefore, when there is mixed question of law and fact, the plea of *res judicata* cannot be decided at premature stage. It requires a full fledged trial after evidence is adduced.

7. It has been held by the Honourable Supreme Court in ***Sathyanath vs Sarojamani (2022) 7 SCC 644*** that the *res judicata* cannot be decided as a preliminary issue when there exists a mixed question of fact and law. Further, In the case of ***Keshav Sood Vs. Kirti Pradeep Sood 2025 SCC Online SC 398*** the Honorable Supreme Court observed that *res judicata* entails a detailed examination of various elements, including the pleadings in the earlier suit, the judgment of the Trial Court, and the judgment of the Appellate Courts.

8. Considering the ratio laid down in above rulings and facts of the case, this application is devoid of merit liable to be rejected. Resultantly, I pass following order-

ORDER

1. The application is rejected.
2. Cost in final cause.

Place:- Kelapur

(Ku. Sayema N.A.S.Shaikh)

Dated:- 12/06/2025

Civil Judge (Jr.Dn.)Kelapur
(Court No 2)

RCS 19/2021
Badriprasad Vs Rajendra