

Title Suit 35448 of 2014

Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)

Order No. 58/ Dated 25.07.2024

Record is put up for order.

An application u/s 11 of CPC was heard at length and today it is taken up for order.

The suit was filed by the plaintiff Mahmood Khan for declaration and injunction.

The defendant after entering into appearance has filed an application u/s 11 read with section 151 of CPC with the prayer to dismiss the suit on principles of res-judicata on the premises that mother of the plaintiff Allarakha Bibi instituted a Title Suit being No. 1074 of 1979 against the defendants praying for partition with rendition of account in respect of the suit property and after full trial, the said suit was dismissed by judgement and order dated 18.04.1984 and subsequently, said Allarakha Bibi preferred an appeal before the Hon'ble High Court being FAT No. 2027 of 1984 which was also dismissed by Order dated 06.03.1985 and since the instant suit involves the same issues which were decided in the Title Suit No. 1074 of 1979, the present suit is barred by principles of res-judicata as the decision rendered in the said Title Suit has been reached to its finality.

The plaintiff filed an objection to the said application u/s 11 of CPC and it is admitted that the said suit was filed by his mother Allarakha Bibi which was dismissed by the Ld. Judge, 4th Bench, City Civil Court, Calcutta.

Section 11 of CPC provides that no Court shall try any suit or any issue in which the matter directly and substantially in issue in a former suit between the same party or between party under whom they or any of them claimed, litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been substantially raised and has been heard and finally decided by such Court.

Therefore, in order to constitute resjudicata, the issues in the subsequent suit are required to be settled.

In the instant suit, the defendant has filed this application before the issues have been settled and moreover, the issues within the suit is barred by resjudicata required to be decided at least by framing preliminary issue.

In the instant suit, the defendant has not yet filed the written statement and therefore, the issues have not been settled and under such circumstances, in my view, the instant petition is taken prematurely without following the procedure laid down in the code.

In the result, the instant petition fails.

Hence, it is

ORDERED

That the instant petition under Section 11 of C.P.C stands rejected on contest.

Fix 25.09.2024 for written statement.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.