



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 31677 OF 2024 (GM-CPC)

BETWEEN:

1. SRI. RAMESH
SO LATE BETTAIAH
AGED ABOUT 47 YEARS
2. SRI. RAJA
SO LATE BETTAIAH
AGED ABOUT 50 YEARS
3. SRI RANAGASWAMY
SO LATE BETTAIAH
AGED ABOUT 45 YEARS

ALL ARE R/AT
DINNEPALYA VILLAGE
KAGGALIPRUA POST
UTTARAHALLOI HOBLI
BENGALURU SOUTH TALUK
BENGALURU RURAL DISTRICT
BENGALURU -560 082

...PETITIONERS

(BY SRI. CHANDRACHUD A., ADVOCATE)

AND:

SRI VENKATAPPA
SO LATE NAGA @NAGAPPA
AGED ABOUT 72 YEARS
R/AT KHASHI LAYOUT,
KAGGALIPURA POST
UTTARAHALLI HOBLI



BENGALURU SOUTH TALUK
BENGALURU-560 082

...RESPONDENT

(BY SRI. MANOHAR N., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED: 19.02.2024 PASSED BY THE PRINCIPAL CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, IN OS NO. 1261/2019 AT ANNEXURE-A TO ALLOW THE APPLICATION FILED BY THE PETITIONER UNDER SECTION 11 OF CPC NUMBERED AS IA NO.2 IN OS NO. 1261/2019 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the orders passed on I.A.No.2 in O.S.No.1261/2019 dated 19.02.2024 passed by the Principal Civil Judge, Bengaluru Rural District, Bengaluru, the petitioner/defendant is before this court.

2. The respondent herein has filed a suit seeking a decree of perpetual injunction restraining the defendants or any other person or persons from interfering with or disturbing the peaceful possession of the suit schedule property of the plaintiff, and also seeking a declaration that the judgment and



decree dated 21.01.2015 in O.S.No.1370/2007 passed by the court of FTC II Bengaluru Rural District is not binding on the plaintiff.

3. The facts of the case are that the respondent herein is a plaintiff. Earlier, the respondent's son had filed O.S. No. 1370/2007 against the very same defendants in the suit, seeking a declaration and an injunction, and the suit was dismissed by a judgment and decree dated 21.01.2015. Against that, the plaintiff has filed RFA. No. 478/2015, which was dismissed by an order dated 27.08.2019. Now, it is the case of the father, who is, the plaintiff in the present suit, that the judgment and decree passed in the earlier suit is not binding on him and that the son of the plaintiff has no right to file the earlier suit. The relief he has sought is the same relief of injunction and declaration. The defendants have filed an application under Section 11 of the CPC, stating that the suit is barred by res judicata and that came to be dismissed by order impugned.

4. While dismissing the application, the trial court observed that the principles of res judicata apply to parties claiming under the same person. Admittedly, in the case on



hand, the plaintiff also claims title and possession under his father, Mutta and Naga. Even in O.S. No. 1370/2007, the plaintiff therein, who is the son of the plaintiff herein, was claiming title and possession under Mutta and Naga. In view of this, the principles of res judicata would definitely apply. However, the main objection of the plaintiff herein is that, while he is alive, his son cannot file a suit, as he has not inherited the property during his lifetime. In this aspect, a full-fledged trial is required, and the said aspects cannot be decided without a full-fledged trial. It is also observed that res judicata is a mixed question of law and facts, it depends upon the facts and circumstances of each case. It is the plaintiff's case that, during his lifetime, his son could not file a suit claiming possession and title over the suit schedule property. However, the sons have filed the suit fraudulently. The trial court has concluded that the issue of res judicata cannot be applied in the case at hand without a full-fledged trial. The trial court further observed that the subject matter involved in the previous suit and the present suit is one and the same, and the parties claiming are the same. The only question that needs to be tried is whether his son had the right during his lifetime to file a suit without his



father. Another point is whether the said suit is filed fraudulently. Hence, the principle of res judicata cannot be applied to the facts and circumstances of this case. Aggrieved thereby, the defendant is before this court.

5. Learned counsel appearing for the petitioner/defendant submits that the trial court has failed to consider the contentions put forth by the defendant both on facts and on law. It is submitted that when both the earlier plaintiff and the present plaintiff are claiming the right to property from an ancestor, that is, the earlier suit grandfather, and in the present suit from the father, and when the trial court has given a finding that they are not in possession of the property and are not entitled to the relief as prayed for, and when the said judgment and decree has attained finality, now, in the light of Section 11 of CPC, the present suit is barred by res judicata, though the trial court has appreciated the fact and has also accepted the contention that the subject matter is one and the same and, as per Section 11, res judicata applies, still the trial court has rejected the application. It is further submitted that the property was sold by the great-grandfather of the plaintiff



in the earlier suit, and the father of the present plaintiff sold the property in favour of the defendant's father's vendor in the year 1952.

6. Learned counsel appearing for the respondents submits that the trial court has rightly held that this is a mixed question of fact and law, where the evidence has to be led, and at this stage the same cannot be decided, particularly the prayer that the earlier plaintiffs, who are the sons of the present plaintiff, have fraudulently filed the suit and have no right to file the suit. The application was rightly dismissed, and there are no grounds to interfere.

7. Having heard the learned counsels for either side, perused the material on record. Before proceeding with the merits of the matter it is appropriate to look at Section 11 of CPC.

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former 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.



Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”



It is the contention that there is no dispute, as rightly recorded by the trial court, that the suit schedule property is one and the same, and that both the plaintiffs in this case and in the other case derive their right and title to the property from the common person. Here, apart from seeking a declaration and injunction, if that is the case, it would fall within a straight bracket, whether it is hit by the principles of res judicata or not. But in this case, the plaintiff is seeking another relief, that is, that the judgment and decree is not binding on him. It is his case that, the suit has been filed fraudulently. During the lifetime of the plaintiff in the present suit, the plaintiffs in the earlier suit had no right to file the suit, and the plaintiff has raised independent contentions. Even if the contentions of the petitioner are held to be correct, only the part of the suit relating to the declaration can be appreciated, and the relief with regard to declaration and injunction can be considered. But there is another prayer which has to be decided by the trial court after a full-fledged trial with regard to the binding nature of the earlier suit. In those circumstances, having appreciated the contentions, the trial court has held that, it is a mixed question of fact and law, and therefore evidence has to be



adduced. But at this stage, in an application under Section 11 of the CPC filed by the defendant, the suit cannot be dismissed. In the considered opinion of this court, the trial court has rightly answered the issue, and there are no grounds to interfere.

8. In that view of the matter, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed.***
- ii. The trial court shall dispose of the matter expeditiously.
- iii. Pending I.As. in this petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**