

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.11563 OF 2015

**Nagorao S/o Ranba Ingale and another Vs. Vimalbai W/o
Shridhar Lohar.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.G.N.Kulkarni, advocate for the Petitioners
Mr.K.K.Naik, advocate for Respondent.

CORAM : S.V.GANGAPURWALA, J.
Date : 21.03.2016.

PER COURT :

1. Heard.
2. The application for framing issue of res-judicata is rejected.
3. Learned counsel for the petitioner submits that pleadings about the bar of res-judicata is made in the Written Statement along with number of the earlier suit. However, the Court has refused to frame the issue of res-judicata, on the contrary, has observed that Section 11 of the C.P.C does not operate.
4. The learned counsel for the Respondent submits that the issues in the earlier suit and the present suit are different and are not concerned with each other, the application is rightly rejected.
5. The fact pleaded by a party and denied by another gives rise

to issue. The bar of res-judicata has been pleaded by the petitioner in his Written Statement, more particularly, para 6A of the Written Statement. The issue of res-judicata involves mixed question of law and fact. The Court may decide the said issue one way or the other, however, can not prejudice the issue.

6. In light of the above, the impugned order is quashed and set aside. The trial Court shall frame the issue of res-judicata as prayed vide Exh.43 is allowed. The said issue be tried along with all other issues.

7. The Writ Petition is disposed of. No costs.

(S . V . GANGAPURWALA, J .)

Dt.21.03.2016.
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