

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 59 of 2017**

1. Anthu S/o Bulchu, Aged About 40 Years R/o Village Dwarika Nagar, Tahsil And District Surajpur, Chhattisgarh
2. Sohar S/o Bulchu, Aged About 55 Years R/o Village Dwarika Nagar, Tahsil And District Surajpur, Chhattisgarh
3. Jairam S/o Bulchu, Aged About 48 Years R/o Village Dwarika Nagar, Tahsil And District Surajpur, Chhattisgarh
4. Mansai S/o Bulchu, Aged About 45 Years R/o Village Dwarika Nagar, Tahsil And District Surajpur, Chhattisgarh
5. Ramlal S/o Rupan, Aged About 50 Years R/o Village Dwarika Nagar, Tahsil And District Surajpur, Chhattisgarh
6. Prankunwar D/o Rupan, Aged About 45 Years R/o Village Dwarika Nagar, Tahsil And District Surajpur, Chhattisgarh
7. Kesarwati Tripathi W/o Arun Tripathi, Aged About 50 Years R/o Shitla Ward, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh(Defendant No. 1 To 6 & 8)

---- Petitioners**Versus**

1. Sukhlal S/o Kundua, Aged About 50 Years R/o Village Dwarika Nagar, R.C.No. Pilkha, Tahsil And District Surajpur, Chhattisgarh (Plaintiff)
2. State Of Chhattisgarh, Through Collector Surajpur, P.S. & P.O. Surajpur, District Surajpur, Chhattisgarh(Defendant No.7)

---- Respondents

For Petitioners	:	Ms. Priyanka Mehta, Advocate
For Respondent No.2/State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****17/04/2017**

1. Heard on admission.

2. This is the revision filed by the defendants No.1 to 6 & 8 by questioning the order dated 25.01.2017 passed by the trial Court in Civil Suit No. 20-A/2015, by which, an application filed by the applicants under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) has been rejected.

3. The undisputed facts of the case are that the plaintiff Sukhlal has instituted a suit for permanent injunction against the applicants/defendants. The suit was registered as Civil Suit No. 40-A/2013 (renumbered as C.S. No. 20-A/2015). The said suit was contested by the defendants/applicants by filing their written statement. Only after considering the pleadings of both the parties, the trial Court has framed the issues on 21.08.2015 and then additional issues have also been framed on 02.11.2016. After framing the issues as such, the defendants have moved an application on 23.11.2016 under Section 11 of the Code of 1908 (ought to have been mentioned as under Order 7 Rule 11 of the Code of 1908) for rejection of the plaint on the ground of principles of res judicata.

4. It is stated in the aforesaid application that the plaintiff's earlier suit bearing Civil Suit No.205-A/2012 has already decided finally on 10.09.2012, therefore, the instant suit seeking the same relief would be barred by the principles of res judicata as provided under Section 11 of the Code of 1908.

5. The aforesaid application was contested by the plaintiff stating therein, that since one of the defendants Kesarwati Tripathi was not the party in an earlier instituted suit, therefore, the instant suit cannot held to be barred by the principles of res judicata. The plaintiff submits further that since the earlier instituted suit was not decided on merits, therefore, the principles of res judicata cannot be held to be applicable in the facts and circumstances of the present case, and therefore, the application as filed deserves to be rejected.

6. The trial Court, after considering the rival submissions of the parties, has rejected the said application, by its order dated 25.01.2017 by observing that in an earlier instituted suit, one of the defendants, namely, Kesarwati Tripathi was not the party and observed further prima facie that as the earlier suit was not decided on merits, therefore, the instant suit cannot be held to be barred by the principles of res judicata as provided under Section 11 of the Code of 1908 and, accordingly, the application was rejected.

7. Being aggrieved with the aforesaid order, the defendants/applicants have preferred this revision while exercising the powers enumerated under Section 115 of the Code of 1908.

8. Ms. Priyanka Mehta, learned counsel for the applicants submits that since the earlier suit with regard to the same issue has already been decided finally on 10.09.2012 in Civil Suit No. 205-A/2012, therefore, the instant suit is apparently barred by the principles of res judicata.

9. I have considered the submissions of learned counsel for the applicants and perused the entire annexures attached to the revision petition and also examined the order impugned carefully.

10. The plaintiff has instituted a suit on 25.02.2013 for permanent injunction. The suit was contested by the defendants and after considering the pleadings of both the parties, the trial Court has framed the issues on 21.08.2015 and then an additional issue was also framed on 02.11.2016. One of the issues that was framed by the trial Court was in relation to the maintainability of the suit as to whether the same is barred by the principles of res judicata.

11. The examination of the judgment delivered in an earlier instituted suit, bearing Civil Suit No.205-A/2012, decided on 10.09.2012, would reveal that the same was not decided on merits as the same could not have been adjudicated

for want of evidence, as I found prima facie, in the said judgment. Therefore, prima facie, it cannot be held that the subsequently instituted suit would be barred by the principles of res judicata. Even otherwise, one of the defendants, namely, Kesarwati Tripathi was not the party in the said suit, therefore, from any angle, it cannot be held at this stage that the subsequent/present suit would be barred by the principles of res judicata as stated by the defendants/applicants. Be that as it may, the question with regard to the applicability of the said principle is a mixed question of law and fact, and therefore, it could be decided only by considering the evidence of both the parties. I, therefore, do not find any merit in this revision at this stage. It is, however, made it clear that the trial Court without the influence of any of the observation of this Court would decide the said additional issues, framed on 02.11.2016, by considering the evidence of both the parties at the time of its final hearing.

12. With the aforesaid observation, the revision is hereby disposed of. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge