

HIGH COURT OF CHHATTISGARH, BILASPUR**F.A. No. 197 of 2018****Reserved on 22.07.2021****Pronounced on 10.08.2021**

1. Saddam Hussain Qureshi S/o Moinuddin Qureshi Aged About 19 Years Occupation Labour, R/o Mayapur, Ward No.32, Gurudwara Ward, Nagar Nigam Ambikapur, District Surguja, Chhattisgarh,
2. Salauddin Qureshi S/o Moinuddin Qureshi Aged About 17 Years Minor Through The Natural Guardian Mother Nasumun Nisha, Appellant No.4, R/o Mayapur, Ward No.32, Gurudwara Ward, Nagar Nigam Ambikapur, District Surguja, Chhattisgarh.
3. Aman Qureshi S/o Moinuddin Qureshi Aged About 15 Years Minor Through The Natural Guardian Mother Nasumun Nisha, Appellant No.4, R/o Mayapur, Ward No.32, Gurudwara Ward, Nagar Nigam Ambikapur, District Surguja, Chhattisgarh.
4. Nasimun Nisha Wd/o Late Moinuddin Qureshi Aged About 55 Years Occupation Housewife, R/o Mayapur, Ward No.32, Gurudwara Ward, Nagar Nigam Ambikapur, District Surguja, Chhattisgarh (Plaintiffs). **---- Appellants**

Versus

1. Adarsh Goyal S/o Shri Rajendra Prasad Goyal Aged About 30 Years Occupation Business, R/o Village Shivnandanpur, Police Station Bishrampur, Tahsil Surajpur, District Surajpur, Chhattisgarh.
2. Vikas Goyal S/o Shri Mohan Lal Agrawal Aged About 25 Years Occupation Business, R/o Village Shivnandanpur, Police Station Bishrampur, Tahsil Surajpur, District Surajpur, Chhattisgarh.
3. Masoom Qureshi S/o Dilshad Ahmed Aged About 33 Years R/o Mayapur, Ward No.32, Gurudwara Ward, Nagar Nigam Ambikapur, District Surguja, Chhattisgarh.
4. State Of Chhattisgarh Through The Collector, Surajpur, District Surajpur, Chhattisgarh (Defendants). **---- Respondents**

For Appellants:	Shri Anurag Singh, Advocate.
For Respondents No.1 & 2:	Shri Shakti Raj Sinha, Advocate.
For Respondent No3:	None, though served.
For State/Respondent No.4:	Shri Devesh Chandra Verma, G.A.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Judgment / Order**

1. This Appeal has been preferred by the Plaintiffs under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC')

questioning the legality and propriety of the order dated 25.01.2018 passed in Civil Suit No.49-A/2011, whereby the learned trial Court has rejected the plaint holding it to be barred by principles of res judicata under Section 11 of CPC. The parties to this appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration of title and injunction by submitting, *inter alia*, that predecessor-in-interest of theirs, namely, Moinuddin was the erstwhile owner of the property described in plaint Schedule 'A' and upon his sad demise on 18.02.2002, it was inherited by them. According to the Plaintiffs, Defendant No.3-Masoom Qureshi, who was the son of their deceased sister-Fatima, had got the revenue papers mutated in his name along with them by taking undue advantage of their being minors and sold the part of it, i.e., the suit properties described in plaint Schedule 'B' to Defendants No.1 and 2, namely, Adarsh Goyal and Vikas Goyal without any authority under a registered deed of sale dated 09.09.2004 and, who, in turn, have obtained the revenue papers recorded in their name. Further contention of the plaintiff is that since the said defendants have started raising construction over it, therefore, they have been constrained to institute the suit in the instant nature, instituted on 05.05.2011, claiming ownership with regard to the plaint Schedule 'B' properties and for the declaration to the effect that the alleged registered deed of sale is null and void with a further relief of injunction restraining the Defendants from interfering in their peaceful possession over it.

3. Defendants 1 and 2 have contested the suit and during trial moved an application under Order 7 Rule 11 of CPC by submitting, *inter alia*, that

the alleged mutation, which was recorded jointly in the name of the plaintiffs, and the said Defendant-Masoom Qureshi as well as the alleged sale were questioned by one Jahanara while projecting herself to be the daughter of said Moinuddin in a suit registered as Civil Suit No.4-A/2008, renumbered as Civil Suit No.1-A/2013 and as the said suit was ended up on 20.01.2013 by the First Additional District Judge, Lok Adalat, Ambikapur on the basis of compromise upholding the alleged mutation, therefore, the instant claim with regard to the same subject matter is barred by the principles of res judicata and the suit is, therefore, liable to be rejected.

4. In reply to the aforesaid application, it was stated by the plaintiffs that since the alleged suit was not decided upon adjudication of the issues involved therein nor their mother Nashimun Nisha was impleaded as a party defendant, the principles of res judicata would, therefore, be not attracted in the present suit.

5. The trial Court, after considering the aforesaid application, arrived at a conclusion that since the earlier suit, being Civil Suit No.1-A/2013 with regard to the same subject matter, was ended up on the basis of compromise and was decreed on 20.01.2013, therefore, the instant suit is barred by the principles of res judicata. As a consequence of it, the trial Court has rejected the plaint in exercise of the powers under Order 7 Rule 11 of CPC. This is the order which has been impugned by way of this appeal.

6. Learned counsel appearing for the plaintiffs submits that the finding of the Court below holding the claim to be barred by principles of res judicata in view of the compromise decree dated 20.01.2013 passed in Civil Suit No.1-A/2013 is apparently contrary to law. According to him,

neither the mother of the plaintiffs was the party in the said suit nor was it decided upon adjudication of the issues involved therein, therefore, it ought not to have been held to be barred under the said principles. It is contended further that the principles of res judicata would be attracted only if the case is decided by a speaking order upon adjudicating the issues involved between the parties and since the issues have not been adjudicated, therefore, the Court below has committed a serious illegality in dismissing the claim by applying the principles of res judicata. In support, reliance has been placed upon the decision rendered by the Supreme Court in the matters of ***Pulavarthi Venkata, Subba Rao and others v. Valluri Jagannadha Rao (deceased) by his heirs and legal representatives, and others*** and ***V. Rajeshwari (SMT) v. T.C. Saravanabava*** reported in **AIR 1967 SC 591** and **(2004) 1 SCC 551**, respectively.

7. On the other hand, learned counsels appearing for the respective Defendants have supported the order impugned as passed by the trial Court.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. The question which arises for determination in this appeal is as to whether the Court below was justified in rejecting the plaint under Order 7 Rule 11 of CPC holding it to be barred by principles of res judicata under Section 11 of CPC?

10. From perusal of the record, it appears that the plaintiffs' claim has been held to be barred by principles of res judicata merely on the ground that since the earlier suit, being Civil Suit No1-A/2013, instituted by so

called daughter Jahanara of erstwhile owner was decided on the basis of compromise decree dated 20.01.2013, therefore, the instant suit is suffered by the said principles. However, it appears that in an earlier instituted suit the plaintiffs' mother Nashimun Nisha was neither the party nor the same was decided upon adjudication of the issues involved between the parties nor the pleadings of it have been found to be placed on record. Yet, the Court below, while applying the principles of *res judicata*, has rejected the plaint in exercise of the powers enumerated under Order 7 Rule 11 of CPC.

11. For applicability of the principles of *res judicata* is concerned, it has been observed by the Supreme Court in the matter of ***Syed Mohd. Salie Labbai (Dead) by Lrs and others vs. Mohd. Hanifa (Dead) by Lrs. And others*** reported in **AIR 1976 SC 1569** that in order to give effect to the principles of *res judicata* provided under Section 11 of CPC, the following conditions are required to be established:-

- (i) that the litigating parties must be the same;
- (ii) that the subject matter of the suit also must be identical;
- (iii) that the matter must be finally decided between the parties and ;
- (iv) that the suit must be decided by a Court of competent jurisdiction.

12. It is now to be noted at this juncture that the alleged compromise decree dated 20.01.2013 passed by Lok Adalat in Civil Suit No.1-A/2013 was made only on the basis of the consent of the parties of the said suit without adjudicating the issues involved therein. In such circumstances, it would not operate as *res judicata* as held by the Supreme Court in the

matter of ***Pulavarthi Venkata, Subba Rao and others v. Valluri Jagannadha Rao (deceased) by his heirs and legal representatives, and others*** (supra) wherein it has been held at para 10 as under:-

10.The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the court on the agreement of the parties. The court did not decide anything. Nor can it be said that a decision of the court was implicit in it. Only a decision by the court could be *res judicata*, whether statutory under S.11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests.....

13. Moreover, before applying the principles of *res judicata* under Section 11 of CPC, the Court below should have examined not only the entire pleadings of the earlier instituted suit, but should have seen that whether it was decided on merits or not. It is not in dispute that the pleadings of the earlier suit, ended on the basis of compromise decree, were not brought on record and solely on the basis of the said consent decree, the claim was held to be hit by the principles of *res judicata* under Section 11 of CPC. However, in absence of the pleadings of an earlier instituted suit, the Court below should have refrained from rejecting the plaint as such, in view of the principles laid down by the Supreme Court in the matter of ***V. Rajeshwari (SMT) v. T.C. Saravanabava*** (supra) wherein, it has been held at para 13 which reads as under:-

13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of *res judicata* and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in *Syed Mohd. Salie Labbai v.*

Mohd. Hanifa (1976) 4 SCC 780 the basic method to decide the question of *res judicata* is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as *res judicata*. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in *Gurbux Singh v. Bhooralal* (1964) 7 SCR 831 placing on a par the plea of *res judicata* and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in *Kali Krishna Tagore v. Secy. of State for India in Council* (1887-88) 15 IA 186 pointed out that the plea of *res judicata* cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.

14. In the instant matter as observed herein above, the plaintiffs' mother was neither found to be impleaded in an earlier suit being Civil Suit No.1-A/2013, which was ended up on the basis of compromise decree drawn on 20.01.2013, nor the pleadings of it were placed on record, nor the issues involved therein were found to be adjudicated. In view of the said background and in the light of the aforesaid principles, the claim of the plaintiffs cannot be held to be hit by the principles of *res judicata* under Section 11 of CPC, as held by the trial Court.

15. Accordingly, the appeal is allowed and the impugned order dated 25.01.2018 passed by the Second Additional District Judge, Surajpur, District Surajpur (C.G.) in Civil Suit No.49-A/2011 is hereby set aside and

the matter is remitted to the said Court and/or the concerned Court with a direction to restore the suit in its file and decide the same on merits in accordance with law. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita