

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURC.R. No.42 of 2021

1. Vikram Raj S/o Hansharaj Makkad Aged About 44 Years R/o Ward No. 10 Mahasamund Tahsil And District Mahasmund. Chhattisgarh
 2. Neelam D/o Hanshraj Makkad Aged About 40 Years R/o Ward No. 10 Mahasamund Tahsil And District Mahasmund. Chhattisgarh
 3. Ekta D/o Hanshraj Makkad Aged About 36 Years R/o Ward No. 10 Mahasamund Tahsil And District Mahasmund. Chhattisgarh
- Applicants**

Versus

1. Sunil Suresh Kumar S/o Lat Shri S.J. Kumar Aged About 76 Years R/o Village Sankrajonk, Tah. Pithoura, District- Mahasamund Chhattisgarh
 2. Anil Arvind Kumar S/o Lat Shri S.J Kumar Aged About 70 Years R/o Lig. 2675, Industrial Area Bhilai District - Durg. Chhattisgarh
- Non-Applicants**

For Applicant: Shri Rakesh Kumar Thakur, Advocate.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
Order on Board

27.10.2021

1. This Revision has been preferred by the Applicants/Defendants under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 31.08.2021 passed in Civil Suit 'A' No.S-01/2019 by the 2nd Civil Judge, Class-2, Mahasamund (CG).
2. Brief facts of the case are that the Non-Applicants/Defendants have filed a civil suit for declaration of title and further to declare the order passed in Revenue Case No.73-A/6 dated 30.07.2013, as void, for possession stating therein that they are having Government lease and *Bhumi Swami* right of diverted land bearing No.1176/4/54 admeasuring 0.025 hectares i.e. 2740 sq.ft of land situated in Patwari Halka No.89 Rajasva Nirikshak Mandal, Tahsil and District- Mahasamund. It has further been averred that the Non-Applicants have never sold the suit land and that legally it cannot be sold without prior permission of the Competent Officer.

3. The Applicants have filed their written statement and raised the issue that the suit is barred by doctrine of *res judicata* as the issue involved is also in the previous civil suit and the trial Court and the appellate Court has already decided that the father of the Plaintiffs/Non-Applicants have taken the suit premises on rent from the maternal grandfather of the Applicants/Defendants namely Hardattamal and passed the decree of eviction and recovery of arrears of rent, which has been confirmed by the learned First Appellate Court and High Court of M.P as well in the Second Appeal. The maternal grandfather of the Non-Applicants/Plaintiffs has filed the execution proceeding in view of the decree passed in his favour before the learned trial Court dated 30.04.1975 against the father of the Non-Applicants/Plaintiffs in which, the Non-Applicant has filed an objection. The said objection has been rejected by the executing Court on 02.07.1977 holding that the objector does not have any right over the decreed house against which, the Appeal has been preferred, which has also been dismissed on 19.10.1977. Before framing of issues, the Applicants/Defendants have filed an application under Order 7 Rule 11 CPC that the suit is barred by doctrine of *res judicata*.

4. After hearing the parties, the trial Court has dismissed the application.

5. The question which now arises for determination is whether the impugned order is legal, proper and justifiable ?

6. Heard learned Counsel for the Applicants and perused the impugned order.

7. In Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors. AIR 2021 SC 3802 : AIROnline 2021 SC 474, the Hon'ble Supreme Court interpreted the law laid down in Order 7 Rule 11 CPC and the concept of *res judicata*.

8. Order 7 Rule 11(d) of CPC states that a plaint shall be rejected "*where the suit appears from the statement in the plaint to be barred by any law*".

Therefore, to ascertain if a suit is barred by any law, it is the statement in a plaint that has to be analyzed and interpreted. Any Court while deciding such applications under Order 7 Rule 11(d) CPC must be mindful only to the averments in the plaint. Whether a particular suit is barred by any law, it must be ascertained from the statements in a plaint and not on the foundation of any other submission before the court including the written statement in the case.

9. The court further referred to [Section 11](#) of the CPC, which is as under:-

“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.”

10. To determine whether a suit is barred by res judicata, it is necessary that (i) the ‘previous suit’ is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit”; and since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the ‘previous suit’, such a plea will be beyond the scope of Order 7 Rule 11 (d) CPC, where only the statements in the plaint will have to be perused.”

11. In *Kamala & Others v. KT Eshwara Sa & Ors* reported in (2008) 12 SCC 661, it has been held at paragraph-23 as under:-

“23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the

Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.”

12. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the ‘previous suit’, such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused. The trial Court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide them in the first instance.

13. The trial court, while rejecting the application, has reserved the right of the Applicant that the same will be decided after hearing both the parties on such issues, therefore, this Court is of the view that the said Court has committed no irregularity. Hence this revision fails and is dismissed accordingly. However it is directed that the concerned trial court shall consider whether a preliminary issue should be framed under Order XIV of Code of Civil Procedure and if so, decide it according to law in expeditious manner. No costs.

Sd/-

(Deepak Kumar Tiwari)
JUDGE