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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 34 OF 2020

SMT. ANANDI NAMDEV RAJE

.... APPLICANT.

V/s.

**SMT. MUKTABAI KRISHNA NAVADEKAR
& 23 ORS.**

.....RESPONDENTS.

Mr. Drupad S. Patil, Advocate for the Applicant.

Mr. Sachin S. Punde, Advocate for Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 01, 2022.

P.C.:

1. Special Civil Suit No. 348 of 2013 is taken out by Respondents against Judgment & Decree dated 15-04-2013 passed in R.C.S. No. 233 of 2007.

2. In the said suit, the Applicant-Petitioner, who is decree holder in RC Suit No. 233 of 2007, has invoked provisions of Order VII Rule 11 (d), claiming that second suit, questioning the decree passed in earlier suit is not maintainable as parties to the earlier decree

passed in RC Suit No. 233 of 2007 were duly represented, written statements were filed so also affidavit of evidence. According to Mr. Drupad Patil, learned counsel for the applicant, principle of res-judicata will operate. As such, second suit is barred by law.

3. His next contention is even if the present suit is based on pleadings of fraud, such suit is not maintainable for want of appropriate pleadings as the case is of practicing fraud by the plaintiffs in RC Suit No. 233 of 2007 on the present plaintiffs, who were defendants in the earlier suit. According to him in the aforesaid background, having regard to the provisions of principle of res-judicata, the fact that fraud is alleged to be practiced by the defendant in the earlier suit alongwith plaintiffs therein, plaint is liable to be rejected, as appropriate remedy is that of filing of an appeal.

4. I have appreciated the said contentions.

5. This court is required to be sensitive to the principle that fraud vitiates everything. As far as pleadings in Special Civil Suit No. 348 of 2013 are concerned, it is specifically pleaded in para -7 as to mode and manner of fraud practiced by defendant nos. 2 to 7 alongwith

the plaintiff in RC Suit No. 233 of 2007 on the plaintiffs in the matter of obtaining the decree in earlier Suit.

6. Apart from above, fact remains that if the decree as has been claimed in the earlier suit i.e. RC Suit No. 233 of 2007 is obtained by fraud, the same can be termed as an exception to the principle of res-judicata.

7. In view of the above, the order impugned does not call for any interference in extraordinary jurisdiction as no error of jurisdiction could be noticed.

8. Revision as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]