

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

37 CRA NO.179 OF 2017

RAJESH LAXMAN TITME AND OTHERS
VERSUS
SUNIL SUDAM AWARI AND OTHERS

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Advocate for Applicants : Mr. A. N. Nagargoje
Advocate for respondent Nos. 1 to 3,5 and 6
Advocate for respondent Nos. 7 and 8 : Mr. V. S. Bedre
AGP for respondent Nos. 10 to 12 : Mr. S. P. Tiwari

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CORAM : S. G. MEHARE, J.

DATE : 23.10.2023

PER COURT :

1. The petitioner had raised an objection that the suit was hit under the principle of res judicata, and the plaint was liable to be rejected.
2. On the previous date, the recent Judgment of the Hon'ble Supreme Court in the case of **Keshav Sood Vs. Kirti Pradeep Sood and others (Civil Appeal No. 5841 of 2023)**, was brought to the notice of the learned counsel for the petitioner. However, he requested time to go through the said Judgment and search for the other Judgments.
3. The learned counsel for the applicant Mr. Nagargoje, submits that the application was not filed under Order VII Rule 11 of the Code

of Civil Procedure. Therefore, the ratio laid down in the case of Keshav Sood cited *supra* is not applicable to the case at hand. The prayer was not for the rejection of the plaint.

4. In the case of Keshav Sood (*supra*), it has been held that the issue of *res judicata* could not have been decided in the scope of Order VII Rule 11 of the Code of Civil Procedure.

5. Order VII Rule 11 of the Code of Civil Procedure is the only provision to deal with the legal objections that debar the plaintiff to continue the suit. Though the application does not title an application under Order VII Rule 11 of the C.P.C., the indirect prayer was to reject the plaint. In the facts and circumstances of the case, the Court is of the view that the ratio in the case of Keshav Sood is squarely applied to the case at hand.

6. The learned counsel was not armed with the other judicial pronouncement against the law laid in the case of Keshav Sood. Hence, there appears no substance in the arguments of the learned counsel for the applicants that since the case is not under Order VII Rule 11 of the Code of Civil Procedure, the ratio is not applicable. Therefore, the revision application stands dismissed. No order as to costs.

(S. G. MEHARE J.)