

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO.12918 OF 2023

SUKRAM SUPDU MALACHE BHILL AND OTHERS
VERSUS
RAMESH LALA BHIL MALACHE AND OTHERS

...
Advocate for Petitioners : Mr. D. A. Bide h/f Mr. Tambade P. G.
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CORAM : S. G. MEHARE, J.
DATE : 20.10.2023

PER COURT :-

1. Heard the learned counsel for the petitioners.
2. The petitioners have filed an application under Rule 11 of Order VII of the CPC for dismissing the suit. The learned joint Civil Judge Junior Division, Bhadgaon rejected the application by order dated 10.08.2022. The application seems filed to decide the issue of *res judicata* as a preliminary issue.
3. The Hon'ble Supreme Court in case of ***Keshav Sood Vs. Kirti Pradeep Sood and others, Civil Appeal No.5841 of 2023 (Arising out of S.L.P (Civil) No.35740 of 2017)***, dated September 12, 2023 has held that, "the issue of *res judicata* could not have been decided on an application under Rule 11 of Order VII of the CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier

suit, the judgment of the Trial Court and the Judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of *res judicata* raised by the appellant on merits”.

4. In brief, the issue of *res judicata* would be decided on merit by framing an issue along with other issues.

5. In view of the aforesaid ratio laid down by the Hon’ble Supreme Court, the application Exh.38 itself was not tenable. Besides this, the impugned order is free from any legal errors. Hence, the writ petition stands dismissed at admission stage.

(S. G. MEHARE, J.)

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vmk/-