



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

41 CRA NO.89 OF 2022

Shirish Ramchandra Rajopadhye (Died),
through L.Rs. 1-A] Yamini Shirish
Rajopadhye & Anr.

....Applicants

Versus

Vishnu Babu Raykar & Ors.

....Respondents

Mr. Ravibhushan P. Adgaonkar, Advocate for the Applicants.

Mr. D. B. Bhange, AGP for Respondent-State.

Mr. Sanjay N. Gaikwad h/f. Mr. Niteen V. Gaware, Advocate for R/1 to
4, 5, 7 to 13.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 3rd MARCH 2025

P.C.:-

1. Heard Mr. Adgaonkar, learned Advocate for the Applicants.
2. The Applicants impugn the order dated 15th February 2022 passed below Exhibit-133 in Regular Civil Suit No.308 of 2008 by which the prayer of Applicants seeking rejection of plaint invoking Order VII Rule 11 of Code of Civil Procedure, 1908 has been declined by the Trial Court. [Hereinafter parties are referred as per original status in the suit for brevity and convenience].
3. Mr. Adgaonkar, learned Advocate for the Applicants submits that the Plaintiffs have previously instituted suits in respect of same property seeking relief of perpetual injunction. There is reference in

the plaint as regards to the previous suits. The issues which are decided in previous suit are now again raised in the present suit. According to him, the decree passed in previous suit would operate as res-judicata in present case. Defendant No.4 had filed application seeking rejection of plaint under Order VII Rule 11(d) read with Section 11 of CPC. However, Trial Court rejected application on the ground that copies of the plaint in previous suit are not made part of present plaint. As such, plaint in previous suit cannot be considered as documents appended to plaint in present suit. Mr. Adgaonkar would further submit that now issues have been framed by Trial Court, but issue as to bar of suit by res-judicata is not framed.

4. Considering submissions advanced, it is apparent that Defendant No.4 is seeking rejection of plaint on the ground that suit is barred by principles of res-judicata as enshrined in Section 11 of CPC. Defendant No.4 is relying upon the pleadings in previous suit and judgments delivered therein to demonstrate that issues raised in present suit have already been adjudicated. It is trite that application under Order VII Rule 11 can be decided merely on the basis of pleading in the plaint and documents appended thereto. Defence raised in written statement or any other document is not germane to the enquiry under Order VII Rule 11 of CPC. The Supreme Court of India in case of *Srihari Hanumandas Totala Vs. Hemant Vitthal Kamat & Ors.*¹ as

¹ AIR 2021 SC 474

referred by Trial Court has laid down that, to adjudicate an application of Section 11 of CPC, the reference to the pleading and material in previous suit is required, such finding can be arrived during the course of trial and, therefore, the issue of res-judicata is not germane to the proceeding under Order VII Rule 11 of CPC.

5. In that view of the matter, no fault can be found in the impugned order. However, if such an issue is raised in the written statement, it would be necessary for the Trial Court to frame it and render finding on such issue along with other issues framed in the suit.

6. In that view of the matter, there is no merit in this revision application, the same stands rejected.

(S. G. CHAPALGAONKAR, J.)