



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2180 OF 2020

Shri Balaji @ Vyankatesh Sansthan,
having P.T.R. No.1395 Sultan Pura
through its Trustees.

- 1) Shri Vinay Pralhadrao Chatur,
President,
- 2) Gajanan Gulabrao Mohod,
Trustee,
- 3) Pravin Vinayakrao Pande,
Trustee,
- 4) Chetan Bhaskarrao Pataskar,
Trustee,
- 5) Dilip Ramdas Yadav,
Trustee,
- 6) Shrikant Sheshrao Zodpe,
Trustee,
- 7) Ravindra Vijayrao Dhamele,
Trustee,
- 8) Pravin Pralhadrao Hirulkar,
Trustee,
- 9) Milind Murlidhar Tikile,
Trustee,
- 10) Krushna Murlidhar Parve,
Trustee,

All R/o. Sultanpura, Achalpur City,
Tahsil-Achalpur, District – Amravati.

.... **PETITIONERS**

VERSUS

Sadashiv s/o Omkarkurai,
Aged 60 years, Occupation – Cultivator,
R/o Vilayatpura, Achalpur City,
Tahsil – Achalpur, District Amravati.

.... **RESPONDENT**

Mr. A.V. Khare, Counsel for the petitioners,
Mr. Hitesh Biherani, Counsel for the respondent (through V.C.).

CORAM : ABHAY J. MANTRI, J.

DATE : 26th FEBRUARY, 2025

ORAL JUDGMENT :

Heard. **Rule.** Rule is made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioners are challenging the order dated 02-07-2020 passed by the Joint Civil Judge, Senior Division, Achalpur, below Exhibit 14 in Regular Civil suit No.61/2020, thereby rejecting the application filed by them under Section 11 of the Civil Procedure Code (for short, "CPC") for dismissing the suit.

3. The respondent-plaintiff filed suit for declaration and permanent injunction against the petitioners/defendants. During the pendency of the suit, the petitioners filed an application under Section 11 of the CPC, contending that the present suit is hit by the principle of *res judicata*. Therefore, they urged for the dismissal of the suit in limine. The respondent resisted the application. After considering the record, the learned Trial Court rejected it. Aggrieved by the same, the petitioners are before this Court.

4. Mr. A.V. Khare, learned Counsel for the petitioners, vehemently contended that earlier, one Yashodabai filed the suit for a permanent

injunction. During the pendency of the suit, she died, and thereafter, the respondent herein moved an application to bring him on record as a plaintiff. The said application was rejected by the Trial Court and confirmed up to the Hon'ble Apex Court. Therefore, the plaintiff has no right to file the suit as his rights to implead in the suit has already been determined in the earlier Suit. Despite the said fact, the petitioner filed the suit claiming the relief of declaration of his right and injunction. Therefore, he submitted that the petitioners are entitled to the relief as claimed.

He further made a two-fold argument that the (i) Trial Court has not paid attention to the averments in the plaint and the relief sought in it, passed the impugned order; so also in the earlier suit, no relief of declaration was sought by Yashodabai. Therefore, the respondent's suit is hit by the principle of *res judicata*. However, the learned Trial Court has not considered the same and rejected the application. The Trial Court has not applied its mind to the facts of the case and passed the order contrary to the settled principle of law. Hence, he urges to allow the petition.

5. Conversely, Mr. Biherani, learned Counsel for the respondent, submitted that the cause of action in the earlier and present suit is different. Therefore, it cannot be said that the suit is hit by the principle of *res judicata*. He has pointed out the pleadings regarding

the cause of action in both the suits. Hence, he submitted that the order passed by the Trial Court is just and proper and that no interference is required in it.

6. I have considered the rival submissions and perused the impugned order as well as the record.

7. At the outset, it appears that the petitioners moved an application under Section 11 of the CPC and thereby prayed for the dismissal of the suit. It is pertinent to note that the question of *res judicata* is a mixed question of facts and law, and to determine the same, the parties have to lead evidence in support of their case. Moreover, to constitute *Res Judicata*, the matter directly and substantially in issue in the subsequent suit ***must have been heard and finally decided by the court in the former suit.*** Besides, based on the application, the suit cannot be dismissed straightway without determining the question of fact and law. In view of the same, I do not find substance in the contention of the learned Counsel for the petitioners in that regard.

8. *Per contra*, it reveals that filing the application under Section 11 of the CPC without filing the written statement is not tenable for claiming the relief of dismissal of the suit. *Furthermore*, it is not a

claim of the petitioners that the issue in the earlier suit and the subsequent suit has been directly and substantially in issue between the same parties. Undisputedly, in the earlier suit, the respondent was not impleaded as a party, but his application to implead him as a party was rejected. Therefore, it cannot be said that the issue was finally decided/determined in the earlier suit. Apart from this, the earlier suit was disposed of as abated, and no issue was finally decided in the suit. Thus, I do not find substance in the application and contentions of the learned counsel in that regard.

9. Considering the same, I do not find merit in the petition. As such, the petition, being devoid of merit, stands dismissed. As a sequel, interim relief stands vacated.

Inform the learned Trial Court accordingly.

(ABHAY J. MANTRI, J.)