



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

WRIT PETITION NO. 7044 OF 2024

Shridhar Machindra Maharnor
Age : 60 years, Occ. Agriculture
R/o. Bag Pimpalgaon, Tq. Georai,
District Beed.

...Petitioner
(Original Plaintiff)

VERSUS

1. Machindra Maroti Maharnor
Age:82 years, Occu: Agriculture,
R/o: Bag Pimpalgaon, Taluka Georai,
District Beed
2. Gorakh Maroti Maharnor
Age: 71 years, Occu: Agriculture,
R/o: As above
3. Pravin Dadarao Maharnor
Through his Guardian mother
Sudamati Dadarao Maharnor
Age: 33 years, Occu: Household,
R/o: As above
4. Dadarao Machindra Maharnor
Age: 51 years, Occu: Agriculture,
R/o: As above.

...Respondents
(Original Defendants)

Advocate for Petitioner : Mr. Satyajit S. Bora
Advocate for Respondent Nos.1,3 and 4 : Mr. Vilas P. Savant

CORAM : ABASAHEB D. SHINDE, J.

DATE : 20.02.2026

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing at the stage of admission.

2. The petitioner by this Writ Petition filed under Article 227 of the Constitution of India takes exception to the order dated 21.03.2024 passed by the Civil Judge Junior Division and Judicial Magistrate First Class, Georai, District Beed (for short 'learned trial court') below Exhibit-1 in Regular Civil Suit No.282 of 2017 by which the suit filed by the petitioner has been dismissed by the learned trial court holding that the same is barred by principle of *res judicata* under Section 11 of the Code of Civil Procedure, 1908 (for short 'CPC'), pursuant to an application filed by the respondents under Rule 11 of Order VII of CPC.

3. Learned counsel for the petitioner submits that the petitioner who is original plaintiff has instituted Regular Civil Suit No.282 of 2017 on 25.09.2017 for partition and separate possession against the present respondents. He would further submit that the respondents who are original defendants have filed their written statement resisting the suit *inter alia* contending that the suit filed by the petitioner is barred by principle of *res judicata* on the ground of

petitioner having filed earlier suits touching the subject matter of present suit. The learned trial court on 22.01.2020 on the basis of pleadings has framed issues below Exh.26 including the issue of *res judicata*. He would submit that it is thereafter that the respondents filed an application below Exh.30 under Rule 11 of Order VII of CPC contending that the plaint filed by the petitioner deserves to be rejected since the same is barred by principle of *res judicata* in view of filing of at least five suits earlier bearing R.C.S No.179 of 1998, R.C.S. No. 121 of 2004, R.C.S. No. 273 of 2005, R.C.S. No. 223 of 2010 and R.C.S. No. 221 of 2008 between the same parties.

4. Learned counsel for the petitioner further submits that the petitioner resisted the said application filed by the respondents. The learned Trial Court however, by the impugned order allowed the said application and dismissed the suit filed by the petitioner on the ground that the same is barred by principle of *res judicata* under Section 11 of CPC by virtue of filing earlier suits.

5. He would further submit that the reasoning adopted by the learned trial court is perverse and contrary to the scope of Rule 11 of Order VII of CPC. He would submit that the suit could not have been dismissed at least on the ground of principle of *res judicata*. In order to ascertain whether the suit is barred by principle of *res judicata*, the pleadings as well as the documents produced on record need to be

considered during the trial and not while deciding an application under Rule 11 of Order VII of CPC. To buttress his submission, he has relied on the observations of the Hon'ble Apex Court in the case of **Keshav Sood vs. Kirti Pradeep Sood and Ors. in Civil Appeal No. 5841 of 2023** (Arising out of SLP (C) No.35740 of 2017) decided on 12.09.2023.

6. *Per contra*, learned counsel appearing for the respondents/ original defendants would submit that the learned Trial Court has rightly passed the impugned order pursuant to the application filed by the respondents and dismissing the suit filed by petitioner on the ground that the same is barred by principle of *res judicata*. He would further submit that while passing the impugned order, the learned Trial Court has rightly considered the aspect of filing of earlier suits between the same parties therefore, interference in the impugned order is not warranted. He therefore, urge that the Writ Petition deserves to be dismissed.

7. After having heard learned counsel for the petitioner as well as learned counsel for the respondents, I find that it would be apt to consider the provision of Order VII Rule 11 of CPC which reads thus :

“11. Rejection of plaint— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

8. Considering the above provisions, assuming that an application filed by the respondents is construed to have been filed under Order VII Rule 11 (d) of CPC, even in that case it is only the pleadings in the plaint which needs to be considered and nothing otherwise.

9. I find that at least the plea of res judicata could not be gone into while deciding an application under Rule 11 of Order VII of CPC. It is settled position of law that, while deciding an application under Rule 11 of Order VII of CPC, the Court is supposed to look into only the averments made in the plaint and at the most the documents placed on record alongwith the plaint. A support can be drawn from the observations of the Hon’ble Apex Court in the case of **Karam Singh vs.**

Amarjit Singh and Others reported in **2025 SCC Online SC 2240** and more particularly paragraph No.15 which reads thus :

“15. Before we assess the correctness of the impugned orders, we must remind ourselves of the basic principles governing rejection of a plaint under Order 7 Rule 11 of CPC. Here, the defendants seek rejection of plaint under clause (d) of Rule 11 (i.e., suit barred by law). Clause (d) makes it clear that **while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered** to find out whether the suit is barred by law. At this stage, the defense is not to be considered. **Thus, whether the suit is barred by any law or not is to be determined on the basis of averments made in the plaint.**

10. In short, the documents pertaining to pleadings of earlier suits could not have been gone into by the learned Trial Court while deciding an application filed by the respondents under Rule 11 of Order VII of CPC by allowing the said application and dismissing the suit on the ground that the same is barred by principle of *res judicata*.

11. It is also pertinent to note that the issue as regards maintainability of the suit on the ground of *res judicata* has already been framed by the learned Trial Court vide Exh.26 and the respondents would get an opportunity to lead oral as well as documentary evidence to substantiate as to whether the suit is barred by principle of *res judicata* during the trial but certainly not while deciding an application under Rule 11 of Order VII of CPC.

12. The issue involved in the case in hand is squarely covered by the observations of the Hon'ble Apex Court in the case of **Keshav Sood** (supra), wherein the Hon'ble Apex Court has observed thus :

“4. After having heard the learned Counsel appearing for the parties, we find that the plea of res judicata could not have been gone into on an application made by the Appellant Under Rule 11 of Order VII of Code of Civil Procedure. Apart from pleadings in the earlier suit, several other documents which were relied upon by the Appellant in his application Under Rule 11 of Order VII of Code of Civil Procedure were required to be gone into for deciding the issue of res judicata.

5. As far as scope of Rule 11 of Order VII of Code of Civil Procedure is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a Defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application Under Rule 11 of Order VII of Code of Civil Procedure. 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.

13. The view taken in the case of **Keshav Sood** (supra) has been reiterated by the Hon'ble Apex Court in the case of **Pandurangan vs. T. Jayrama Chettiar And Another** reported in **2025 (10) SCC 279** wherein, the Hon'ble Apex Court in paragraph No. 6 observed thus :

“6. In *Srihari Hanumandas Totala v. Hemant Vithal Kamat*, this Court held that the adjudication of the plea of *res judicata* is beyond the scope of Order 7 Rule 11 CPC, the Court held: (SCC p. 112, para 25)

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by *res judicata*, it is necessary that (i) the "previous suit" is decided (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4 Since, an adjudication of the plea of *res judicata* requires consideration of the pleadings, issues, and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.”

(emphasis supplied)

14. In short *res judicata* is an issue to be decided in trial and cannot be summarily decided in an application to reject plaint. In the light of observations of the Hon’ble Apex Court in the case of **Keshav Sood** (supra) as well as the law laid down in the case of **Pandurangan**

(supra), I find that impugned order passed by the learned Trial Court is erroneous and warrants an interference. I therefore, pass the following order :

ORDER

A) The Writ Petition is allowed.

B) The impugned order dated 21.03.2024 passed by the learned Civil Judge Junior Division, Georai below Exh.1 in Regular Civil Suit No.282 of 2017 thereby dismissing the suit filed by the petitioner on an application filed by the respondents below Exh.30 under Rule 11 of Order VII of CPC (read with Section 11 of CPC) is hereby quashed and set-aside by restoring the suit filed by the petitioner.

C) Rule is made absolute in above terms.

(ABASAHEB D. SHINDE, J.)

V.S.Joshi