



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.98 OF 2025

Niraj B. Rahangdale and anr. **Vs.** Indirabai @ Fulanbai H. Bawankar

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. I. N. Choudhari, Advocate for applicants.

Mr. A. M. Chandekar, Advocate for non-applicant/respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 24.03.2026.

. The present revision arises out of order dated 08.07.2025 passed by the learned 2nd Joint Civil Judge, Junior Division, Gondia rejecting application for rejection of plaint filed by the present applicants vide Exhibit-13 in Regular Civil Suit No.308 of 2023.

2. The contention of the learned advocate for the applicants/defendants is that the plaintiff had filed an earlier civil suit being Regular Civil Suit No.50 of 2005 against one Rajesh, who is vendor of the defendant, the defendant and his brother Nitin with respect to the suit property claiming declaration of ownership and a decree for perpetual injunction restraining the defendants in the said suit from disturbing his possession over the suit property.

3. The learned advocate states that the said civil suit was dismissed by the learned Trial Court vide judgment and decree dated 30.10.2013, which was confirmed vide judgment and decree dated 29.06.2017 passed in

Regular Civil Appeal No.151 of 2013 and finally vide judgment dated 05.07.2019 passed by this Court in Second Appeal No.59 of 2019. The learned advocate contends that the judgment passed by this Court is not challenged further and as such the adjudication of the lis holding that plaintiff is not the owner of the suit property has attained finality between the parties.

4. He further contends that the prayer for possession, as also, for perpetual injunction restraining the defendant from making construction over the suit property is a prayer which depends upon adjudication of ownership of the plaintiff over the suit property. He further contends that since it is already declared that plaintiff is not owner of the suit property, he does not have right to seek relief of perpetual injunction and possession sought in the suit. In sum and substance the contention is that the suit is barred by res judicata.

5. Learned advocate for the plaintiff/respondent contends that res judicata is a mixed question of law and facts and, therefore, plaint cannot be rejected on the said ground.

6. It is well settled that res judicata is a mixed question of law and facts. However, perusal of the plaint will indicate that the fact of filing of earlier suit is specifically pleaded in the plaint and in that sense filing of the earlier suit is not a fact in dispute. The judgments delivered in the earlier round of litigation are also a

matter of record, which can be duly established by placing certified copies thereof on record.

7. In view of the aforesaid, in the considered opinion of this Court, although the order passed by the learned Trial Court need not be disturbed, it will be expedient that the learned Trial Court is directed to frame a preliminary issue on the aspect of res judicata and decide the same at the earliest.

8. The learned Trial Court may take recourse to Order X of the CPC in order to examine the parties before deciding the preliminary issue if it so deems fit.

9. Civil Revision Application is **disposed of** accordingly by directing the learned Trial Court to decide the issue of res judicata by framing a preliminary issue.

(ROHIT W. JOSHI, J.)

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