

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR**

**CIVIL REVISION NO.327/2012**

Sabdal Singh & another

**Vs.**

Shivraj Singh Thakur and others

Shri Imtiaz Husain, learned counsel for the petitioners.  
Shri R.S. Siddiqui, learned counsel for respondents No.1  
to 3.

Shri K.L. Prajapati, learned counsel for respondents  
No.1 to 14, 16 and 17.

**O R D E R**  
**(19/08/2015)**

The petitioners have filed this Civil Revision challenging the order dated 30.08.2012 passed by Civil Judge Class-I, Begamganj, District Raisen in Civil Suit No. 39-A/2010, thereby rejecting the application filed under Order 7 Rule 11 of the C.P.C.

2. Brief facts of the case are that the plaintiffs/respondents filed Civil Suit for partition, possession and declaration against the defendants/petitioners. The defendants/petitioners have filed an application under Order 7 Rule 11 of the C.P.C. for dismissal of the suit on the ground of res judicata stating that the suit is barred by principle of res judicata in view of the judgment and decree passed in Civil Suit No. 82-A/2004 which

was affirmed in Civil Appeal No. 8-A/2005 vide its judgment and decree dated 09.04.2007.

3. The Court below rejected the application filed by the petitioners. Against the said order the petitioners have filed Review Petition which was also dismissed. Being aggrieved by both the orders the petitioners have filed a Writ Petition No. 20066/2011 before this Court. The Writ Petition was disposed of vide order dated 27.01.2012 with a direction to the trial Court to frame preliminary issue whether the suit is barred by res judicata and to try the same in accordance with law without being influenced by order dated 14.09.2011 and 24.10.2011. In compliance of the order of this Court, the trial Court framed issue on the point of res judicata and permitted the parties to lead the evidence on the issue so framed. After recording the evidence the trial Court vide impugned order dated 30.08.2012 has held that the suit filed by the plaintiffs/respondents is not barred by the principle of res judicata. Being aggrieved by this order, the petitioners have filed the present revision.

4. Learned counsel for the petitioners argues that the trial Court has erred in holding that the suit is not barred by res judicata. He further argues that in earlier suit the parties as well

as the subject matter of the suit is same as in the subsequent suit and, therefore, the trial Court has committed an error in not dismissing the suit on the principle of res judicata. He further argues that in the earlier suit the trial Court has found that the plaintiffs are not the owner of the suit lands and the said judgment has attained the finality in First Appeal as well as Second Appeal and, therefore, the plaintiffs cannot file a suit against for partition as the question of partition does not arise on the same dependent and consequential on the title of the property. He further argues that as in the previous suit the plaintiffs failed to prove their title, there is no question of decree of any partition in favour of the respondents/plaintiffs, therefore, he prays for dismissal of the suit on the ground of res judicata. He relies on the judgment passed by Apex Court in the case of **Abdul Rehman Vs. Prasony Bai and another, AIR 2003 SC 718.**

5. On the other hand, learned counsel appearing for the respondents submit that although the disputed land is the same as involved in the previous suit and the parties are same but issues and the cause of action in the subsequent suit is different. In the previous suit the plaintiff has claimed the

relief for declaration while in the subsequent suit, he prays for relief of partition. Thus, the relief claimed in both the suits are different and, therefore, trial Court has not committed any error in deciding the preliminary issue in favour of the respondents/plaintiffs. Learned counsel placed reliance on the judgment passed by Apex Court in the case of **Deva Ram and another Vs. Ishwar Chand and another, AIR 1996 SCC 378**.

6. I have heard learned counsel for the parties and perused the plaint filed by the petitioners of the previous suit as well as the subsequent suit. From perusal of the relief clause, it is apparent that the relief which is claimed in the previous suit is that of the declaration, while in the subsequent suit the relief claimed by the plaintiffs is regarding the partition although the parties and the subject matter of the suit is identical in both the cases, however, the relief which is claimed in both the cases are different. The Hon'ble Apex Court in **Deva Ram and Another (supra)** in paragraph 3 has held as under:-

“3. In the previous suit, which was instituted by the respondents, an issue,

namely, Issue No.5 was framed on the status of the appellant as to whether they were the tenants of the land in suit under the respondents but in the subsequent suit did not plead that they were the tenants under the respondents. What they pleaded was that they were in possession since a long time namely from Samvat 2005 and had, therefore, acquired title by adverse possession. Consequently, in the subsequent suits, the issue which was raised and tried in the previous suit was not raised, framed or tried and no finding, therefore, came to be recorded as to whether the defendants were tenants of the land in suit. It is true that the instant suit which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of this suit, namely, the disputed land, is the same as was involved in the previous suit but the issues and causes of action were different. Consequently, the basic requirement for the applicability of rule of res judicata is wanting and, therefore, in the absence of pleadings, in the absence of issues and in the absence of any finding, it is not open to the learned counsel for the appellants to

invoke the rule of res judicata on the ground that in the earlier suit it was found by trial Court that the appellants were the tenants of the land in dispute under the respondents.”

7. In the said judgment, the Apex Court has held that it is true that the instant suit which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of this suit, namely, the disputed land, is the same as was involved in the previous suit but the issues and causes of action were different. Consequently, the basic requirement for the applicability of rule of res judicata is wanting and, therefore, the Apex Court has held that the appellants cannot invoke the rule of res judicata on the ground that in the earlier suit it was found by trial Court that the appellants were the tenants of the land in dispute under the respondents. In the present case also the subject matter of the suit is same, parties are same, however, the cause of action in both the suits are different and, therefore, it cannot be said that the suit is hit by principle of res judicata. The judgment relied upon by learned counsel for the petitioners is not applicable in the present case as in the present

case as it was already held that the cause of action is different in both the suits. So far as, question of confirmation of title and claiming the relief of partition in the previous suit is concerned, it is held that in the subsequent suit the plaintiffs have claimed the relief of partition and whether he can claim the partition when he has no title in the suit in question which is to be tried by the Courts below after the trial. Thus the trial Court has not committed any error much less material irregularity in deciding the preliminary issue in favour of the plaintiffs/respondents.

8. Thus, the revision fails and is hereby dismissed without any order as to costs.

(Ms. Vandana Kasrekar)  
JUDGE

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