

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

R.A. No. 131 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>28.03.2022</u>	

FOR HEARING OF C.M.A. 1262/2017.
FOR HEARING OF MAIN CASE.

Mr. Khadim Hussain Soomro Advocate for applicants.
Mr. Imran Ali Burani Advocate for respondent No.1
Mr. Allah Bachayo Soomro A.A.G.

MUHAMMAD SHAFI SIDDIQUI, J.- Applicant here has filed a suit No.235 of 2014 before the Senior Civil Judge Golarchi at Badin, which was assigned new No.88 of 2015 subsequently. The trial court on a preliminary issue of maintainability of the suit by applying section 11 CPC dismissed it, whereas the appeal No.80 of 2016 maintained the order of the trial court. Against the order of Civil Appeal the applicant has preferred this revision application on the ground that the jurisdiction was wrongly exercised by the two courts below. There was no concept of principles of resjudicata that could have been applied since the suit of the respondent on the basis of which principle of resjudicata was applied, and that too was for a declaration of his right, was dismissed by first appellate court, on remand by the Honourable Supreme Court, though a revision application against the said order of the dismissal by appellate court is pending adjudication before this Court.

2. Such contention is opposed only on the strength that suit involved the same property hence resjudicata was rightly invoked in the suit of applicant.

3. I have heard the learned counsel and perused the material available on record.

4. For invoking the principle of section 11 i.e. resjudicata, it is essential that the suits wherein such principle is being invoked, the subject matter has directly and substantially been an issue in a former suit between the same parties or between the party under whom they or any of them, litigating under the same

title, in a court competent to try such suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.

5. At the very outset the issues involved in the two suits are not common. In the prior suit the respondent sought a relief for themselves with regard to property in question that respondent here and plaintiff in said suit be declared as owner, however, in the attempt of establishing such right the respondent failed. Even on remand from Honourable Supreme Court, the appellate court maintained the order of the trial court. Without prejudice to the fact that the prior suit of the respondent was dismissed and the matter is pending adjudication before this Court in Revision Application No.33 of 2020, ideally the principle of resjudicata would not be applied as there is no conclusive decree determining rights of parties and the relief sought by the plaintiff / applicant could not have been granted to him in the shape of a decree in the prior suit of respondent. Prior dismissal of respondent's suit is not the adjudication of claim of applicant[s] here. At the most the trial of the two suits could have commenced together, had the situation so arisen but this is not the situation here. I am only confined to deal with a situation whether trial/appellate court were justified in dismissing the suit of applicant under section 11 CPC and that whether at the relevant time when impugned order was passed, the suit of the applicant was hit by the principle of resjudicata which I would say that the trial court and the appellate court has wrongly concluded this legal issue that the principle of resjudicata was applicable. The issues involved in subsequent suit are different and there cannot be an automatic decree for appellant[s] claim once the suit for respondent was dismissed wherein respondent claimed relief for himself. I therefore, set-aside the order of the trial court as well as appellate court and remand the case to the trial court for a decision on all issues in accordance with law.

The revision application stands allowed.

JUDGE

A.