

(2025) 12 TP CK 0030

Tripura HC

Case No: Revision Petition No. 74 Of 2025

Md. Chunu Miah

APPELLANT

Vs

Hazi Md. Rushan Ali & Ors

RESPONDENT

Date of Decision: Dec. 12, 2025

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 7 Rule 11(d)
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: M.S. Ramachandra Rao, CJ

Bench: Single Bench

Advocate: Aradhita Debbarma, Sankar Lodh

Final Decision: Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. This Revision is filed against order dt.29.07.2025 passed by the Civil Judge (Jr. Divn.), Kailashahar, Unakoti District in T.S. 17 of 2019 rejecting an application moved by the petitioner/first defendant therein for rejection of plaint on the ground that it is barred by the principle of **res judicata**.

2. It was contended in the Court below by petitioner that there were previous suits being T.S. 28 of 2016 and T.S. 17 of 2019 wherein the plaintiffs asserted the same right of passage over the 2nd Schedule path between the same parties, and therefore, the plaint should be rejected.

3. The trial Court held that plaint cannot be rejected at the threshold as the plaintiffs had disclosed a **prima facie** cause of action, and the allegations of limitation, suppression or legal bar required full-fledged adjudication after framing of issues and recording of evidence.

4. Challenging the same, this Revision is filed.

5. Counsel for the petitioner contended that the order passed by the trial Court is incorrect, and warrants interference by this Court in exercise of its Revisional jurisdiction under Article 227 of the Constitution of India.

6. Counsel for the first respondent/plaintiff No.1 refuted the contentions of counsel for the petitioner.

7. It is settled law that to determine whether a suit is barred by the principle of **res judicata**, there are certain preconditions to be satisfied which are as under:

(i) the previous suit is decided;

(ii) 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 to whom they claim, litigating under the same title; and

(iv) that these issues were adjudicated and finally decided by a court competent to try a subsequent suit.

8. The Supreme Court in the case of Srihari **Hanumandas Totala v. Hemant Vitthal Kamat and Others** (2021) 9 SCC 99 held that to reject a plea on the ground that the suit is barred by any law, only the averments in the plea will have to be referred to, and the defence made by the defendant in the suit must not be considered while deciding the merits of the application. It declared that since adjudication of the plea of **res judicata** requires consideration of the pleadings, issues and decisions in the previous suit, such a plea will be beyond the scope of Order VII Rule 11(d), where only the statements in the plea will have to be perused.

9. Similar view is also taken in the case of **Prem Kishore and Others v. Brahm Prakash and Others** (2023) 19 SCC 244 by the Supreme Court.

10. In view of the settled legal position, this Revision fails, and is dismissed. No costs.