



2026:AHC-LKO:20696

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**MATTERS UNDER ARTICLE 227 No. - 1123 of 2026**

Abdul Hakeem And 2 Others

.....Petitioner(s)

Versus

Suhail Ahmad And 5 Others

.....Respondent(s)

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| Counsel for Petitioner(s) | : | Prabhakar Vardhan Chaudhary |
| Counsel for Respondent(s) | : |                             |

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**Court No. - 5**

**HON'BLE ALOK MATHUR, J.**

1. Heard Shri P.V. Chaudhary, learned counsel for the petitioners.
2. In light of the proposed, notice to private respondents, is dispensed with.
3. It has been submitted by counsel for the petitioners that the opposite parties had filed a suit for permanent injunction which is registered as Original Suit No. 2016 of 2012 (Suhail Ahmad Vs. Abdul Hakeem and others) along with the Suit an application under Order 39 Rule 1 & 2 C.P.C. had also filed. In the said suit proceedings, the petitioners are the defendants and had appeared and filed a written statement. In the written statement in paragraphs no. 4 and 17, they had stated that controversy with regard to the disputed land had already been settled previously in a suit initiated at the behest of the petitioners, which was registered at Original Suit No. 498 of 1985, which was decreed in favour of the petitioners, on 12.12.1991, by the Munsif Kunda, District Pratapgarh.
4. It has further been submitted that the order dated 12.12.1991, was affirmed in appeal on 01.05.2013, and subsequently a second appeal is pending for consideration before this Court. It is on the strength of the aforesaid averments one of the issues, framed by the trial court was as to whether the suit deserves to be stayed in terms of Section 10 of C.P.C. applying the principle of res subjudice. Accordingly, the petitioners was to prove before the trial court that the subject matter and parties in both the suits were the same and accordingly, the subsequent suit deserves to

be stayed. The trial court decided the issue no. 5 as a preliminary issue and by means of the order dated 26.09.2022 decided the said issue in favour of the plaintiffs (opposite parties), while deciding the said issue the trial court was of the view that the description of the said land mentioned in Suit No. 498 of 1985 was different from the land of the subject matter of the present suit proceedings and it was further found that when the dispute in both the matters is with regard to the separate land then the principle enshrined in Section 10 of the C.P.C. would not be attracted and accordingly rejected the contentions of the petitioners.

5. Aggrieved by the order dated 26.09.2022 passed by the trial court, the petitioners had preferred an appeal before the Additional District Judge, Pratapgarh, who has also dismissed the appeal, by means of the order dated 1.8.2025 and consequently the order dated 1.8.2025 as well as 26.9.2022 has been assailed in the present writ petition. The only aspect canvassed by the petitioner, assailing the above orders is the fact that the proceedings in both the cases were with regard to the same property and accordingly the principle of res subjudice was squarely applicable and both the courts below have wrongly decided the said issue and accordingly prayed for allowing the present writ petition.

6. Considering the argument of the petitioners, I have proceeded to examine the plaint from which I find that the description of the suit the property has been given by the plaintiffs (opposite parties) in the Naksha Nazri annexed along with the plaint. The said Naksha Nazri contains a map with regard to Khasra No. 569 Kha, area 2-15-18, wherein the area of disputed property was only 0-1-10. I further find that in the written statement preferred by the petitioners before the trial court, they had raised the said issue, vide in paragraph no. 13 and 17 but they have failed to give any description of the Khasra No. 629 and 622, village Tala, Pargana and Tehsil Patti, District Pratapgarh. As indicated, vide order dated 26.09.2022 Additional Civil Judge (Junior Division) in Original Suit No. 2016/2012, is very different and distinct from the present disputed land, which was the subject matter in Suit No. 498 of 1985.

7. It is in the aforesaid circumstances, I find that the trial court has rejected the contention of the petitioners holding that the land in both the

suits were different and hence the principle of res subjudice would not apply. I further find that the order of the trial court has been affirmed by the appellate court, wherein in paragraph no. 8 a finding has been returned that the boundaries in both the suits are different and even the Khasra numbers are separate and distinct. Accordingly, the objections of the petitioners would not be covered under Section 10 of the C.P.C. Before this Court the petitioners have reiterated the arguments but I do not find any material, from which, it can be concluded that the disputed property in both the case, is the same.

8. Accordingly, I do not find any infirmity in both the orders of the courts below. Once, it is found that the disputed properties are separate and distinct, then certain principle of res subjudice will not apply.

9. Accordingly, for the aforesaid reasons, the petition is devoid of merits and is, accordingly, ***dismissed***.

10. The trial court is directed to proceed with the suit proceedings and decide the same with expedition, in accordance with law.

**(Alok Mathur,J.)**

**March 23, 2026**

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