

SYNOPSIS

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**Civil court**

Civil litigations are presented before the civil court which has got jurisdiction to try all suits of civil nature unless they are either expressly or impliedly barred [Sec 9]. A suit is expressly barred if a legislation expressly says so and it is impliedly barred if a statute creates new right or liability and prescribes a particular tribunal or forum for its assertion. When a right is created by a statute and a special tribunal or forum is provided for its assertion and enforcement, the ordinary Civil Court would have no jurisdiction to entertain such disputes. A civil court may be of three grades viz –

- a) District Judge Court – the principal court of original civil jurisdiction and is of the highest grade in a district.
- b) Subordinate Judge Court – the civil court next in order of grade to the district judge court; and
- c) Munsiff Court – the lowest grade of civil court.

Apart from the civil court of the three grades there is court of small causes to try the petty matter having limited jurisdiction. The High Court of a state and the Supreme Court of India are also courts but of appellate jurisdiction so they generally do not try the original suit rather they entertain appeal against the case adjudicated by the civil courts.

## **Jurisdiction of civil court**

Civil Courts have jurisdiction to entertain a suit of civil nature unless barred by law. Every person has an inherent right to bring a suit of a civil nature. Civil Court has jurisdiction to decide the question of its jurisdiction although as a result of the enquiry it may be found that it has no jurisdiction over the matter. Jurisdiction depends not on the truth or falsehood of facts, but upon their nature. Jurisdiction is determinable at the commencement not at the conclusion of the inquiry [Rex v. Boltan (1841) 1 QB 66]. All persons of whatever nationality are subject to the jurisdiction of the Civil Courts of the country except a foreign State, its Ruler or its representative except with the consent of Central Government. Section 6 deal with pecuniary jurisdiction and lays down that save in so far as is otherwise expressly provided Courts shall only have jurisdiction over suits the amount or value of which does not exceed the pecuniary limits of any of its ordinary jurisdiction. There is no pecuniary limit of jurisdiction for a District Court.

### ***Res sub judice***

Section 10 provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. However, the pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of

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action. To prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue, Section 10 is enacted. The purpose is also to avoid conflict of decision. It is really intended to give effect to the rule of *res judicata*. The institution of second suit is not barred by Section 10. It merely says that the trial cannot be proceeded with.

Even though if a case is not governed by the provisions of the Section and matters in issue may not be identical, yet the courts have inherent powers to stay suit on principle analogous to Section 10. Essential conditions for stay of suits: The matter must be two suits instituted at different times; The matter in issue in the latter suit should be directly and substantially in issue in the earlier suit; Such suit should be between the same parties; Each earlier suit is still pending either in the same Court or in any other competent Court but not before a foreign Court . If these conditions exist, the later suit should be stayed till the disposal of earlier suit, the findings of which operate as *res judicata* on the later suit.

For the applicability of Section 10, the two proceedings must be suits e.g. suit for eviction of tenant in a rent control statute cannot be sought to be stayed under Section 10 of Civil Procedure Code on the ground that tenant has earlier filed a suit for specific performance against the landlord on the basis of agreement of sale of disputed premises in favour of the tenant. In such a case, it cannot be said that the matter in earlier suit for specific performance is directly and substantially in issue in later suit for eviction. The reason is that a suit for specific performance of contract has got nothing to do with the question regarding the relationship of landlord and tenant.

### **Res judicata:**

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Section 11 of the Civil Procedure Code deals with the doctrine of Res Judicata that is, bar or restraint on repetition of litigation of the same issues. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues. The doctrine underlines the general principle that no one shall be twice vexed for the same cause (S.B. Temple v. V.V.B. Charyulu, (1971) 1 SCJ 215). The doctrine of res judicata prevails over the doctrine of *lis pendens* where there is a conflict between the two. It prevents two different decrees on the same subject. Section 11 says that once a res is judicata, it shall not be adjudged again. The principle applies to suits in Section 11 of the Code; but even where Section 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of giving finality to litigation. For the applicability of the principle of res judicata embodied in Section 11, the following requirements are necessary: (1) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit. The expression “directly and substantially in issue” means an issue alleged by one party and denied or admitted by the another either expressly or by necessary implications (Lonakutty v. Thomman, AIR 1976 SC 1645). In the matter of taxation for levy of Municipal taxes, there is no question of res judicata as each year’s assessment is final for that year and does not govern latter years (Municipal Corporation v. Madan Mohan, AIR 1976 43). A suit for eviction on reasonable requirement was compromised and the tenant was allowed to continue as tenant for the subsequent suit for ejectment on the ground of reasonable requirement, it was found that some reasonable requirement had been present during the earlier suit. The second suit was not maintainable. (2) The former suit has been decided. Former suit means which is decided earlier. (3) The said issue has been heard

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and finally decided. The issue or the suit itself is heard and finally decided, then it operates as res judicata and is not the reasons leading to the decision (Mysore State E. Board v. Bangalore W.C. & S. Mills, AIR 1963 SC 1128). However, no res judicata operates when the points could not have been raised in earlier suit. (See Prafulla Chandra v. Surat Roit AIR 1998 Ori. 41). But when a suit has been decided on merits, and the appeal is dismissed on a preliminary point, it amounts to the appeal being heard and finally decided and the decision operates as res judicata (Mukunda Jana v. Kanta Mandal, AIR 1979 NOC 116).

(4) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above (Isher Singh v. Sarwan Singh, AIR 1965 SC 948).

In short, this principle applies where an issue which has been raised in a subsequent suit was directly and substantially in issue in a former suit between the same parties and was heard and decided finally. Findings incidentally recorded do not operate as res judicata (Madhvi Amma Bhawani Amma v. Kunjikutty P.M. Pillai, AIR 2000 SC 2301).

Supreme Court in Gouri Naidu v. Thandrothu Bodemma and others, AIR 1997 SC 808, held that the law is well settled that even if erroneous, an inter party judgement binds the party if the court of competent jurisdiction has decided the lis. Thus, a decision that a gift made by a coparceners is invalid under Hindu Law between coparceners, binds the parties when the same question is in issue in a subsequent suit between the same parties for partition.

A consent or compromise decree is not a decision by Court. It is an acceptance of something to which the parties had agreed. The Court does not decide anything. The compromise decree merely

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has the seal of the Court on the agreement of the parties. As such, the principle of res judicata does not generally apply to a consent or compromise decree. But when the court on the facts proved comes to a conclusion that the parties intended that the consent decree should have the effect of deciding the question finally, the principle of res judicata may apply to it.

The rule of res sub judice relates to a matter which is pending judicial enquiry while res Judicata relates to a matter adjudicated upon or a matter on which judgement has been pronounced. Res sub judice bars the trial of a suit in which the matter directly or substantially is pending adjudication in a previous suit, whereas rule of res judicata bars the trial of a suit of an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit between the same parties under the same title. Res Judicata arises out of considerations of public policy viz., that there should be an end to litigation on the same matter. Res-Judicata presumes conclusively the truth of the former decision and ousts the jurisdiction of the Court to try the case. It is however essential that the matter directly and substantially in issue must be the same as in the former suit and not matters collaterally or incidentally in issue.

An application for amendment of a decree is not a 'suit' and may be entertained. But if such an application is heard and finally decided, then it will debar a subsequent application on general principles of law analogous to res judicata. However, dismissal of a suit for default, where there has been no adjudication on the merits of the application, will not operate as res judicata. Similarly an application for a review of judgment if refused does not bar a subsequent suit for the same relief on the same grounds.

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In the case of conflicting decrees, the last decree alone is the effective decree which can operate as res judicata.

According to this provision of the Civil Procedure Code, no Court shall try any suit or issue in which the matter has been directly and substantially in issue in a former suit (i.e. suit previously decided) either between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and finally decided by such Court.

According to Explanation to the Section, the expression ‘former’ suit has been set out as stated above. The competence of a Court to decide an issue or suit is to be determined irrespective of any provisions as to a right of appeal from the decision of such Court. It is stated in Explanation III that the matter must have been alleged by one party and either denied or admitted expressly or impliedly by the other. According to Explanation IV any matter which might or ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such (former) suit.

Constructive res judicata is the doctrine which has been provided for in Explanation IV (viz. matters or issues which could have been taken as ground of defence or attack in a former suit) as earlier referred to. This doctrine is based on the following grounds of public policy: (i) There should be an end to litigation; (ii) The parties to a suit should not be harassed to agitate the same issues or matters already decided between them; (iii) The time of Court should not be wasted over the matters that ought to have been and should have been decided in the former suit

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between the parties; (iv) It is a rule of convenience and not a rule of absolute justice.

Explanation V states that any relief claimed in the plaint but not expressly granted shall be deemed to have been refused. By Explanation VI it is provided that in the case of a representation suit or class action all persons interested in any public or private right claimed in common for themselves and others are to be deemed to claim under the persons so litigating and res judicata shall apply to them.

Explanations VII and VIII have been added by the Amendment Act of 1976. Explanation VII specifically lays down that the principles of res judicata apply to execution proceedings. The general rules of res judicata have been summarized in Explanation VIII. It provides that the decisions of a “Court of limited jurisdiction competent to decide such issue” operates as res judicata in a subsequent suit though the former Court had no jurisdiction to try the subsequent suit. The general principle of res judicata is wider in scope than Section 11 which is applied when a case does not come within four corners of Section 11. However, when the case falls under Section 11 but the conditions are not fulfilled, the general principles of res judicata cannot be resorted to. The conditions may be summarized as follows:

Conditions of res judicata: 1) The matter must be directly and substantially in issue in two suits; 2) The prior suit should be between the same parties or persons claiming under them; 3) The parties should have litigated under the same title; 4) The court which determines the earlier suit must be competent to try the later suit; 5) The same question is directly and substantially in issue in the later suit.

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**Bar to further suit:**

Section 12 puts a bar to every suit where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action. Section comes into force only when a plaintiff is precluded by rules.