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Maintainability of suits in relation to Res Judicata

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ABSTRACT

There have been instances of the Doctrine of Res judicata being invoked by the parties to claim that the suit when filed must be rejected. Such a claim and its acceptance as a ground of rejection of a plaint have been discussed in a recent case decided by the Supreme Court. In deciding the issue, the Supreme Court referred to several cases bearing on the issue. It is of interest to study the principles laid down in several cases to understand the claim made by the parties and its acceptability.

Keywords: Res Judicata, Civil Procedure Code, 1908.

I. RES JUDICATA

“the rule...while founded on ancient precedent is dictated by a wisdom which is for all time”³

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit 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 has been heard and finally decided by such Court.

Explanation I- The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

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³ SIR LAWRENCE JENKINS, SHEOPRASAD SINGH VS. RAMANANDAN PRASAD SINGH, AIR 1916 PC 78.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[**Explanation VII.-** The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

II. INTRODUCTION

Every country's laws are founded on ideals. The entire world of jurisprudence in a country is governed by these ideas. These principles drive legislation, give judicial judgements legitimacy, and protect a nation's residents. The judiciary considers these principles while making decisions and ensures that the legislative and executive follow them.

One such principle is res judicata, whose origins are difficult to identify. It is a universal idea that exists in all jurisdictions around the world. Res judicata is a legal principle that is founded on public policy and applies to everyone. In S.11 of the Code of Civil Procedure, 1908 (hence res judicata), India introduced the principle of res judicata.

Modern day society is full of disputes and proceedings. The courts are flooded with frivolous, slow and cumbersome cases. The embodiment of a principle like matter, is however one in all necessity in our country. so as to bring definiteness to litigation and forestall someone from being dragged to court once more and again, res judicata is important in any society.

This paper essentially focuses on S.11 of the C.P.C. The scope of this project covers an overview of the doctrine of res judicata in general providing a background to this paper. This paper seeks to analyse theory of the doctrine and its application in the form of case laws.

Chapter One deals with res judicata in general, seeking to provide the reader with a background of the doctrine in general. Chapter Two deals with the essentials for application of res judicata.

III. CONDITION FOR RES-JUDICATA

1. Same parties: In both suits i.e. the suit which is pending before the Court and the suit which has been decided (former suit) should be same.

2. Matter in issue:

Subject matter in later suit (which is pending) must be directly and substantially same in the earlier suit (which was decided) Subject matter need not to be identical but substantially same.

3. Same title:

The party must be litigating in the subsequent suit must have litigated under the same title i.e. the same capacity in the earlier or former suit.

IV. ESSENTIALS OF RES JUDICATA

Before granting a Res Judicata decree, the following conditions must first be met:

1. There must be two trials, one preceding (decided beforehand) and the other following.
2. The parties to the preceding and subsequent proceedings or the parties under which they or any of them claim must be the same.
3. The object of the following cause must be identical or related to the preceding cause, in a real or constructive way.
4. The cause must be definitively decided between the parties. The first case should be decided by the court of competent jurisdiction.
5. The parties in the first and subsequent cases must have argued equally.

V. EXCEPTIONS

1. **Judgment in original suit obtained by the fraud** – If a court believes that the judgement of a previous suit was obtained through deception, the idea of res judicata is not applicable.
2. **When previous SLP is dismissed** – When a previous special leave petition is dismissed without adjudication or decision, the rule of res judicata should not be applied. The official suit should be decided finally by the appropriate court in order to obtain the Doctrine of Res Judicata.

3. **A different cause of action** – If the succeeding proceedings have a different cause of action, Section 11 will not apply. If a later suit has a separate cause of action, the court cannot dismiss it.

4. **When there is Interlocutory Order** – The court's interim order, decree, or sentence is known as an interlocutory order. When an interlocutory order is issued in the former litigation, the Res Judicata principle will not be applied. Because an Interlocutory Order provides immediate relief to the parties, it can be changed by a subsequent application, and the result is not permanent.

5. **Waiver of a decree of Res Judicata** – A Decree of Res Judicata is a bar plea that must be waived by the opposing party. If a party fails to raise the defence of res judicata, the case will be determined in his favour. It is the responsibility of the opposing party to inform the court of the outcome of the previous suit. If a side fails to do so, the case will be determined in his favour.

6. **Court not competent to decide** – The idea of res judicata is not applied to the following suit when the prior suit is determined by a court that has no jurisdiction over the case.

7. **When there is a change in Law** – When there is a change in the law and new laws bring new rights to the parties then such rights are not barred by Section 11.

In V.Rajeshwari's case, the Supreme Court stated held as follows:-

- The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit;
- It is a rule of estoppel by Judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause;
- The plea of Res judicata is founded on certain facts and then applying the law to the facts so found;
- The foundation for the plea must be built in the pleadings, followed by the framing and trial of an issue. A plea that was not properly raised in the pleadings or in the issues at trial could not be raised for the first time during an appeal.;
- Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and the Judgment in the previous case;

• In some cases, just a copy of a previous suit's judgement is submitted as proof of res judicata, and the judgement contains exhaustive or required details of the pleadings and issues, which may be sufficient proof.;

- The primary question in deciding the issues of res judicata is to first determine the parties' position as stated in their separate pleadings in their earlier suit, and then to ascertain what had been resolved by the judgement that serves as the 'Res Judicata' age of appeal.

VI. RES JUDICATA BETWEEN CO-PLAINTIFFS AND CO-DEFENDANTS

As the case be for res judicata to exist between a plaintiff and a defendant, and it is also possible for res judicata to exist between co-defendants and co-plaintiffs. If the following conditions are met, an adjudication will be provided as res judicata between co-defendants:

- There must be a conflict of interest between the co-defendants;
- It must be very important to decide that conflict in order to give relief to the plaintiff;
- The question between co-defendants should have been decided by the court;
- The co-defendants were important or parties in the former suit.

In the landmark case of **Cottingham v. Earl of Shrewsbury**⁴, the court decided that if a plaintiff is not able exercise his right without first trying and deciding a matter involving the co-defendants, the Court will try and resolve the case, and co-defendants will be bound by the same. However, if the plaintiff's relief does not need or include a resolution of any case between the co-defendants, the co-defendants will not be bound as between each other by any procedure that is simply necessary to obtain the plaintiff's order.

Iftikhar Ahmed v. Syed Meherban Ali⁵ established that if there is a conflict of interest amongst plaintiffs that needs to be resolved by a court in order to provide relief to a defendant, and the case is already decided, it will serve as res judicata between co-plaintiffs in the following suit.

VII. CONCLUSION

The judiciary is an important organ for maintaining peace and delivering justice. The Indian judiciary has numerous loopholes that cause cases to be adjudicated slowly and ineffectively. Furthermore, allowing several proceedings for the same subject or issue not only causes the parties to the suit to suffer immensely, but it also places an undue strain on the judiciary and

⁴ (1843) 3 Hare 627.

⁵ AIR 1974 SC 749 at p. 751.

wastes its resources by requiring it to conduct trials on the same issue and render judgement on the same. To resolve these issues, the doctrine of res sub judice and res judicata must be applied effectively and strictly, preventing a multiplicity of proceedings that leads to a multiplicity of doubts among the parties as a result of contradictory verdicts provided for the same relief in the same court where the earlier suit is pending or has already been decided. People lose confidence, faith, and trust in society when there is doubt in any legal action. The doctrines of res sub judice and res judicata should be used properly and carefully to ensure that India's judiciary runs smoothly and without problems.

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