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# Unraveling the Enigma Section 09 of Civil Procedure Code 1908

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## ABSTRACT

*This legal research paper delves into the critical examination of Section 9 of the Civil Procedure Code 1908, shedding light on its utmost importance, relevance, legislative underpinnings, and its dynamic judicial interpretations. Section 9 of the Code vests courts with inherent jurisdiction to try all civil suits, which are not barred expressly by any other law. This paper begins by elucidating the historical context and legislative intent behind the incorporation of Section 9, emphasizing the paramount significance it holds in ensuring access to justice for litigants. The scope of Section 9 is explored, highlighting its application to diverse civil disputes and the underlying rationale for its existence in the procedural framework. In light of the recent developments in jurisprudence, this research underscores the continued relevance of Section 9 in the modern legal system, providing a solid foundation for courts to exercise jurisdiction in the interest of justice. By analysing the legislative intent and dynamic judicial approach, this paper seeks to contribute to a deeper understanding of the pivotal role that Section 9 plays in the civil adjudication process.*

**Keywords:** jurisdiction, civil nature, suit, barred suits, Section 9

## I. INTRODUCTION

Laws are either procedural or substantive. People's rights and responsibilities are established by substantive law, whereas the mechanism by which substantive law is enforced is established by procedural law. This arises from the Latin maxim "*ubi jus ibi remedium*", which means, "where there is a right, there is a remedy". Courts exist to ensure that people have access to this kind of redress. To which court would a person have to go, and what steps would need to be taken, to have their rights enforced?

The Code of Civil Procedure, 1908 (CPC) is the procedural law that deals with suits of **civil nature** in India, which answers this question. It specifies how one may use the substantive laws they are entitled to. The authority granted to the Courts by Section 09 of the CPC elevates its status. This provision establishes that the courts have the power to hear any civil case, with the exception of those over which they have been explicitly or implicitly stripped of jurisdiction.

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What this implies is that the Courts have been granted the power to hear and decide issues of a civil character (as opposed to criminal ones), and this power can only be removed by a change in the law. Courts in India have broad authority to try and hear civil cases according to Section 09.

***Section 09 of the Civil Procedure Code, 1908 states that:***

*The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

**Explanation I**

Regardless of whether or not the outcome of the case hinges on the resolution of matters pertaining to religious rituals or ceremonies, an action in which the right to property or to an office is challenged is a suit of a civil character.

**Explanation II**

Whether or whether the office described in Explanation I is associated with a specific location or charges any fees is irrelevant for the purposes of this section.

## II. IMPORTANCE OF SECTION 09 OF THE CIVIL PROCEDURE CODE, 1908

***Section 09 of the CPC gives arms to the judiciary to entertain disputes.***

Section 9 of C.P.C assumes importance by virtue of the fact that it **confers jurisdiction** to Courts to try suits of civil nature. Thus, they have been conferred with an inherent jurisdiction, which can only be taken away by the authority of the law.

The meaning of jurisdiction has been given in *Hriday Roy v. Ram Sarma*<sup>3</sup>, where the Hon'ble High Court at Calcutta held "*jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it*". It was further held that jurisdiction is the authority which a "*Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.*"<sup>4</sup> This definition was further affirmed by the Hon'ble Supreme Court in **Sachindra Nath's case**.<sup>5</sup> It is understood that jurisdiction would mean the power of a Court to hear and determine a case in exercise of its judicial power. The perusal of Section 09 of C.P.C creates an impression that every Civil Court has the jurisdiction to take cognizance of any dispute of civil nature. This jurisdiction that a Court is conferred is, apart from being limited by the authority of the law,

<sup>3</sup> Hriday Nath Roy v. Ram Chandra Barma Sarma, AIR 1921 Cal 34 (FB)

<sup>4</sup> Ibid

<sup>5</sup> Official Trustees West Bengal v. Sachindra Nath Chatterjee, AIR 1969 SC 823

limited by the types of jurisdictions that a Court can have. These types are the **pecuniary jurisdiction, subject matter jurisdiction** and **territorial jurisdiction**. Only a Court that has the jurisdiction suited to the given issue would be competent to hear and adjudicate upon the same.

Jurisdiction refers to both the authority or capacity of a court to decide a dispute between parties and the region over which the court has legal jurisdiction. Both the words "**competence of a court**" and "**jurisdiction of the court**" refer to the court's authority to make decisions in specific cases. Two things are implied by jurisdiction<sup>6</sup>:

- “jurisdiction over the subject-matter of the suit;”
- “a power to make an order”

In *Haris v. Balk*<sup>7</sup> a Maryland court granted Harris a garnishment writ at the request of Epstein, a Maryland citizen, while Harris, a North Carolina resident, was in Maryland on business. Epstein's \$300 claim against Harris against another North Carolinian called Balk garnished Harris's \$180 debt to Balk. Harris paid Epstein's attorney \$180 and didn't object to the Maryland proceedings. Harris returned to North Carolina after having his earnings garnished in Maryland and was sued by Balk for \$180. Harris maintained that paying Epstein completed his obligation. Balk maintained that Maryland never had jurisdiction since Harris was not a resident and he had no property there. North Carolina courts ordered Harris to pay Balk \$180 after refusing to honour the Maryland ruling. North Carolina must implement the Maryland verdict, says the Supreme Court.

As a result, it appears that the Maryland judgement against Harris, which condemned the \$180 that he owed to Balk, was a lawful judgement because the garnishee was served personally by a Maryland court official, giving the court the jurisdiction over him.

Clear procedural law is essential for the effective execution and adjudication of substantive law problems, as is well-established. It is vital for the effective administration of justice that *procedural law establish jurisdiction and divide where cases are to be heard*. The basic purpose of a procedural legislation like the CPC is to implement the principles of substantive law. Herein lies the significance of Section 09, which establishes the method in which courts will address civil disputes. . Section 09<sup>8</sup> of C.P.C. does not only ensure smooth functioning of the Indian justice system, it facilitates and furthers the very idea of justice.

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<sup>6</sup> Kalyan Biswas v. Bahadur Khan, AIR 1925 Cal. 1258

<sup>7</sup> Haris v. Balk 198 U.S. 215 (more) 25 S. Ct. 625; 49 L. Ed. 1023

<sup>8</sup> Section 9, Civil Procedure Code, 1908, No. 5 of 1908 (India).

### III. LEGISLATIVE ANALYSIS

According to Section 9 of the C.P.C., unless otherwise explicitly or impliedly provided, the courts have the authority to hear and determine all **civil disputes**. Two different clarifications of the idea have been offered.

Basically, a civil court will have the jurisdiction to try if :

1. The suit is of a civil nature
2. The cognizance of the same has expressly or impliedly be barred

Components of Section 9 are as follows:

1. Barred Suits

Barred suits are of two types:

- **Expressly Barred Suits:**

The term "expressly barred" refers to the situation in which a lawsuit cannot proceed because of a law that is now in effect. A competent legislature may, within the extent of legislation permitted to it and without violating any provision of the Constitution, refuse civil courts jurisdiction over a certain class of civil claims. Therefore, a claim is said to be explicitly banned when the applicable legislation specifically bans it at the moment the complaint is filed.

- **Impliedly Barred Suits:**

Impliedly forbidden lawsuits are those that are certain to fail as a matter of law. When a law offers one kind of remedy, it bars the individual from pursuing any others. Similarly, a court of law cannot consider a civil case since doing so would be against public policy. A lawsuit is said to be impliedly barred when it is claimed to be precluded by broad principles of law. If a remedy is granted by law, but the plaintiff needs a different kind of compensation, the law does not have to offer it.

2. Civil Nature

The term civil refers to **rights and “remedies sought through action”**. It's a legal proceeding when the plaintiff and defendant are both private people with separate legal personalities. A landmark case decided by the Supreme Court, *Shankarnarayan Potti v. K Sreedevi*<sup>9</sup>, established that "it is obvious that in all types of civil disputes civil courts have inherited jurisdiction as per Section 9 of the CPC unless a part of Jurisdiction is carved out from such

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<sup>9</sup> Sankaranarayanan Potti v. K. Sreedevi, (1998) 3 SCC 751.

jurisdiction, expressly or by necessary implication, by any statutory provision conferred on any other tribunal or authority."

- ***Property disputes, religious liberties claims, requests for individualised remedy, divorce and annulment actions, franchise disputes, contract violations, and other similar cases are all considered civil in nature.*** Lawsuits that aren't civil in nature often include issues of caste, such as membership in a certain caste or expulsion from such caste, as well as issues of pride and honour. The term "**explicitly forbidden litigation**" refers to legal action that was already prohibited by statute. As an example, civil courts lack jurisdiction over cases that are explicitly addressed by other laws, such as the ***Criminal Procedure Code, the Motor Vehicles Act, and similar statutes of legislation***. An impliedly barred action is one whose jurisdiction is precluded by the rules of law. Moreover, in most situations of civil wrong, the burden of proof is on the plaintiff.

### 3. Jurisdiction

The question of whether or not a court has jurisdiction over a matter is always the first point raised in a court of law. There is no effort to define "jurisdiction" in either procedural or substantive law. The Latin words "*juris*," meaning "law," and "*dicere*," meaning "to speak," combine to form the English word "jurisdiction." The essence of jurisdiction is "the ability of a court to determine a matter or issue a ruling."

To have jurisdiction over a case means that the court has the authority to hear and decide the case, as well as to make any necessary rulings or decrees.

The **Calcutta High Court tried to define the word jurisdiction in 1928**, and their effort was as follows:

*"Jurisdiction is the authority of the court to hear and resolve a case, to adjudicate and exercise judicial functions in regard to it."*

## IV. JUDICIAL ANALYSIS

- **Definition of Jurisdiction in case of Civil Wrong**

The Most Reverend ***P.M.A. Metropolitan v. Moran Mar Marthoma***<sup>10</sup> is one of the leading instances that helped develop Section 9 of the C.P.C. The court ruled that the nature's breadth necessitates an interpretation that employs both positive and negative terminology. The

<sup>10</sup> Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma 1995 AIR 2001.

provision's headline, it was added, clarifies that, unless otherwise specified, civil cases must be heard in civil courts. Summarizing the court's final declaration, we read that it will be accessible to anyone seeking justice when both civil and wicked wrongs occur.

- **Exclusion of Jurisdiction**

In the case of *Secy. Of State v. Mask & Co*<sup>11</sup>, it was observed by the Privy Council that exclusion of the jurisdiction of civil court should be expressed or implied. Even in cases of exclusion, civil courts shall be allowed to have cognizance of cases that the statutory tribunal has not had conformity with the fundamental principle of judicial procedure. In the Indian case of *Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana*<sup>12</sup>, it was held that just a conferment of special jurisdiction upon a certain class of suits does not imply that civil court's jurisdiction is barred. The principles about the same were laid in the case of *Dhulabhai v. State of M.P*<sup>13</sup>.

- The validity of the Bombay City Civil Court Act 1948 was challenged in *State of Bombay v. Narottam Das Jethabai*<sup>14</sup>, where the Act reduced the original ordinary civil jurisdiction of the Bombay High Court. The Court upheld the validity of the Act, and this judgement was followed in *Amarendra Nath Roy's case*<sup>15</sup>, where the validity of the City Civil Court Act, 1953, which barred the jurisdiction of the Calcutta High Court from hearing suits the value of which is less than Rs. 10lakh. In a similar case in the *Calcutta High Court*<sup>16</sup>, the Court held that

*“where the value of the subject matter of the disputed claim in arbitration does not exceed Rs.10 lakhs, the Original Side of this Court has no jurisdiction to entertain an application under the 1996 Act.”*

- **Question of Burden of Proof**

In *Abdul Waheed Khan v Bhawani*<sup>17</sup>, the question of **burden of proof was resolved**. A person who seeks relief by the way of a civil court, it is up to the applicant to prove the same. Further in *Kamala Mills Ltd. v State of Bombay*<sup>18</sup>, it was held that in case there is a doubt upon which court must take cognizance, that is jurisdiction, **the assumption of jurisdiction must be relied**

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<sup>11</sup> The Secretary Of State vs Mask And Co. (1940) 42 BOMLR 767.

<sup>12</sup> Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana, 1963 AIR 1547.

<sup>13</sup> Dhulabhai v. State of M.P 1969 AIR 78.

<sup>14</sup> State of Bombay v. Narottam Das Jethabai, AIR 1951 SC 69

<sup>15</sup> Amarendra Nath Roy Chowdhury v. Bikash Chandra Ghosh, 1961 CWN 630

<sup>16</sup> Sushanta Mallik v. SREI Equipment Finance Ltd., AIR 2015 Cal 335

<sup>17</sup> Abdul Waheed Khan vs Bhawani, 1966 AIR 1718.

<sup>18</sup> Kamala Mills Ltd. v State of Bombay [1963]1 S.C.R. 778.

**upon by the relevant court.**

## **V. CONCLUSION**

A court's ability to exercise its jurisdiction is of paramount significance in every case. The Court's ability to hear and rule on the matter is guaranteed by this provision. Defendants' first line of defence in any lawsuit is to question the court's ability to hear the case on the basis of its financial, subject matter, or geographical jurisdiction. A Civil Court has jurisdiction to hear all civil suits unless its cognizance is barred either expressly or impliedly, that a consent by the parties cannot confer or take away the jurisdiction of a Court which naturally does not have jurisdiction, that a decree passed by a Court is nullity and the validity thereof can be challenged at any stage of proceedings, in execution proceedings or even in collateral proceedings.

The significance of the C.P.C's Section 9 cannot be overstated. Any argument that the Court lacks jurisdiction is also an argument that calls into question the constitutionality of Section 9 of the Code. This is crucial because, without the Courts, the litigants would have nowhere to go to seek and obtain justice.

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