

Subject Name: Civil Procedure Code

Topic Name: Res Judicata

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Introduction

Section 11 of the Code of Civil Procedure contains the principle of res judicata, also known as the conclusiveness of a judgement, concerning decisions on matters of fact, law, or both, in subsequent legal disputes involving the same parties. It stipulates that once a matter has been conclusively settled by a competent court, no party can reopen it in subsequent litigation. This provision serves to prevent endless legal battles and spare parties from enduring constant inconvenience, harassment, and expenses.

The doctrine of res judicata finds universal acceptance in civilised legal systems. In Roman Law, for instance, a defendant could successfully challenge a lawsuit brought by a plaintiff by invoking "***ex captio res judicata***," emphasising the notion that one lawsuit and one decision should suffice for a single dispute. As articulated by Spencer Bower, res judicata denotes "***a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or matter in litigation, and over the parties thereto.***"

A succinct explanation of the doctrine of res judicata is provided by Justice Das Gupta in the case of ***Satyadbyan Ghosal v. Deorjin Debi***, wherein he states:

"The principle of res judicata is grounded on the necessity of imparting finality to judicial determinations. Essentially, it asserts that once a matter is res judicata, it cannot be adjudicated upon anew. Its application primarily extends between prior litigation and subsequent litigation. When a matter, whether concerning a question of fact or law, has been conclusively settled between two parties in a prior suit or proceeding, and the decision reached therein is final—either due to the absence of an appeal to a higher court, dismissal of the appeal, or the absence of a right to appeal—neither party will be permitted to revisit the matter in any future suit or proceeding between the same parties."

Section 11 of CPC

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 the Court shall be determined irrespective of any provisions as to 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 another .

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

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

Explanation VI - Where persons litigate bona fide in respect of a 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 references in this section to any suit, issue or former suit shall be construed as

References, respectively, to a proceeding 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 a 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.

Object of Res Judicata

The doctrine of res judicata finds its basis in three fundamental maxims:

- a) "nemo debet bis vexari pro una et eadem causa" (no man should be vexed twice for the same cause);
- b) "interest reipublicae ut sit finis litium" (it is in the interest of the State that there should be an end to litigation); and
- c) "res judicata pro veritate accipitur" (a judicial decision must be accepted as correct).

As aptly noted by Sir Lawrence Jenkins, "the rule of res judicata, while rooted in precedent, is guided by a wisdom that transcends time."

Hence, the doctrine of res judicata emerges from the amalgamation of public policy, as reflected in maxims (b) and (c), and private justice, as expressed in maxim (a); and it applies to all legal proceedings, whether civil or criminal.

Without this rule, litigation would know no end, leaving individuals devoid of security, with their rights embroiled in perpetual confusion and subject to great injustice shielded by the guise of law. This principle is rooted in principles of justice, equity, and good conscience.

The landmark case illustrating the doctrine of res judicata is the Duchess of Kingstone case, where Sir William de Grey made the following notable observations: "*From the plethora of cases regarding the admissibility of judgments in civil suits, two general deductions emerge; firstly, that a judgement from a court of concurrent jurisdiction, directly addressing the issue, serves as a bar, or as conclusive evidence, between the same parties, on the same matter, in question before another court; secondly, that the judgement from a court of exclusive jurisdiction, directly addressing the issue, similarly holds conclusive weight on the same matter, between the same parties, incidentally brought into question in another court for a different purpose.*"

Essentials of Section 11 CPC

The conditions requisite to establish the doctrine of res judicata are delineated as follows, as per the Code of Civil Procedure:

1. Direct and Substantial Issue

The matter must be directly and substantially in contention in both suits. This implies that the subject matter in question must be identical in both instances. It's noteworthy that the concept of "***matter in issue***" is distinct from the subject matter, the objective of the suit, the relief sought, and the cause of action. Even if these aspects differ, the principle of res judicata demands identity in the matter at issue.

Explanation III further elucidates that a matter cannot be considered directly and substantially in contention unless it was explicitly alleged by one party and either denied or admitted, whether expressly or implicitly, by the other party. Therefore, a matter for which no relief is sought cannot be deemed directly and substantially in issue, even if a court decree is rendered

2. Between the same parties

The second indispensable criterion for invoking the doctrine of res judicata stipulates that the previous lawsuit must have involved the same parties or those claiming under them.

Res judicata not only impacts the parties directly involved in the suit but also extends to their privies, i.e., individuals claiming rights under them. It's worth noting that a judgement not inter partes or in rem does not hold the status of res judicata.



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Explanation VI of Section 11 addresses scenarios wherein a decision in a lawsuit may bind individuals not explicitly named as parties, such as in representative suits. If the parties in the subsequent suit can be deemed as represented by those in the former suit, the judgement in the former will be binding on the latter. This provision illustrates the concept of constructive res judicata. Consequently, a decree issued against a shebiat or a trustee will also bind their successor.

3. Litigating under the same title

The third crucial requirement for invoking the doctrine of res judicata is that the parties must have litigated under the same title, i.e., in the same capacity, in the preceding suit.

This means that a lawsuit brought by an individual to regain possession of a property from a stranger, claiming to be the heir of the deceased mahant, does not preclude them from filing a subsequent suit as the manager of the property, if the initial lawsuit was dismissed due to their failure to produce a succession certificate. In this scenario, the two suits arise from different capacities.

4. Competency of Court to Try Subsequent Suit

The fourth condition entails that the court which rendered the judgement in the preceding suit must have possessed the jurisdiction to adjudicate upon the subsequent suit or the suit in which the relevant issue is subsequently raised.

The term "**competent to try**" implies that the court would have been competent to handle the subsequent suit if it had been initiated at the time of the first suit. Competency encompasses both pecuniary jurisdiction and subject matter, with no bearing on territorial jurisdiction. It's noteworthy that a verdict issued by a criminal court does not bind a civil court.

Explanation VIII, introduced by the Amendment Act of 1976, has significantly altered the notion of court competency by explicitly stating that a decision made by a court of limited jurisdiction on an issue falling within its purview shall serve as res judicata in a subsequent suit, even if the said court may not have been competent to hear the subsequent suit. Consequently, a decision by a revenue court on a matter of title will preclude a lawsuit in ordinary civil courts.

5. Heard and Finally Decided

The final condition stipulates that the subject matter directly and substantially contested in the subsequent suit must have been heard and conclusively determined by the court in the initial suit. A matter is considered to have been conclusively settled even if the former suit was resolved ex parte or dismissed due to the failure to present evidence within the allotted time. In essence, there must be a definitive ruling where the court has exercised its judicial discretion.

However, it's imperative that the decision in the former suit was made on the merits. Therefore, a matter cannot be deemed conclusively settled if the former suit was dismissed by the trial court due to lack of jurisdiction, plaintiff's non-appearance, non-joinder or misjoinder of parties, improper framing of the suit, technical errors such as improper valuation, absence of cause of action, or limitation issues.

Constructive res judicata

The rule of direct res judicata is circumscribed to matters explicitly in contention, alleged by one party and either denied or admitted by the opposing party, whether expressly or impliedly. However, the doctrine of constructive res judicata, delineated in Explanation IV to Section II of the Code, represents an "artificial form of res judicata."

It posits that if a plea could have been raised by a party in a preceding proceeding against their opponent concerning the same subject matter, they should not be allowed to raise it in a subsequent proceeding.

This principle, however, runs counter to the public policy considerations underpinning the doctrine of res judicata, potentially leading to harassment and hardship for the opponent.

Moreover, permitting such a practice would undermine the principle of finality of judgments rendered by courts. Hence, this rule aids in bolstering the barrier of res judicata by interpreting the general principles governing the containment of contentious litigants. This explains why it's termed as constructive res judicata.

In the case of the **State of U.P. v. Nawab Hussain**, A, a sub-inspector of police, contested his dismissal from service by filing a writ petition in the High Court, alleging lack of opportunity to be heard.

Subsequently, he filed a suit raising an additional ground that the dismissing authority lacked jurisdiction. The State argued that the suit was barred by constructive res judicata.

The Supreme Court, allowing the appeal filed by the State, held that the suit was indeed barred by constructive res judicata since the plea was known to the plaintiff and could have been raised in the earlier writ petition. Similar principles apply to trial court proceedings, where pleas raised but not pressed during the hearing are also subject to constructive res judicata.

In the landmark case of **Devi Lal Modi v. STOs**, A's challenge to the validity of an assessment order under Article 226 was dismissed on merits, both at the High Court and Supreme Court levels. Subsequently, A filed another writ petition against the same order, adding new grounds.

The Supreme Court ruled that the petition was barred by the principle of constructive res judicata, emphasising the importance of upholding public policy considerations, even in cases involving alleged violations of fundamental rights. This underscores the imperative of respecting the finality of judgments pronounced by the courts.