

Res Judicata: A Broad Principle Of Civil Law

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Abstract: It was debatable whether the term ‘suit’ would include writs and whether the principle of res judicata would apply to writ petitions. The concept of res judicata is basically based on the principle of equity, justice and good conscience i.e. once the matter has been contended on the merits and has been finally heard, the same matter shall not be brought before except under the provisions of appeal, review and revision. And it would be unconstitutional to leave the party dispute having obtained the decree in the state of apprehension, uncertainty and anxiety which also violates the principles of right to dignified life under article 21 of Indian constitution.

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Introduction:

Generally larger purpose of Code of Civil Procedure is societal stability and to provide procedure for resolving disputes and the purpose of the maxim Ubi jus ibi remedium without procedural law is remain in effective. Likewise the concept is applicable in the case of res-judicata. The maxim ubi jus ibi remedium requires that whenever there is a right there is a remedy and that remedy has been provided but with no stability and certainty.

Once the court has applied its judicial mind and has decided the suits on merits, thereafter when the decree has been passed there has to be certainty about the decree and there should be any possibility of any fresh trial by the same court or any other concurrent court. It is the line with public policy also to bring about finality to litigation.

It is the broad principle which prevents the multiplicity of cases and dealt with uncertainty of judicial and legal decision too.

Meaning Of Res Judicata:

The section 11 of code of civil Procedure, 1908¹ provides the provisions related to the concept of res judicata. “The principle of res judicata while founded

on ancient precedent, is dictated by a wisdom which is for all time”²

Further there are many maxims which provide the idea and conceptual clarity related to the meaning of res judicata which as follows:

- Exceptio res Judicatae – A provision judgment is bar to a subsequent suit.
- Nemo debet bis vexari pro una et eaden – No one should be twice troubled for one and the same cause .
- Nemo debet bis puniri pro uno delicto – No one ought to be punished twice for the same offence.
- Res judicata pro veritateocciptur- A matter adjudged is taken to be truth.
- Interest republicaeut sit finislitium – It is in interest of the state that there should be a limit of litigation.

The concept of res judicata is basically based on the principle of equity, justice and good conscience i.e. once the matter has been contended on the merits and has been finally heard, the same matter shall not be brought before except under the provisions of appeal, review and revision. And it would be unconstitutional to leave the party dispute having obtained the decree in the state of apprehension, uncertainty and anxiety which also violates the principles of right to dignified life under article 21 of Indian constitution.

The general meaning of res judicata is if the matter which is in dispute between the same parties under same title related to the same subject-matter which has already been decided by the competent court in the former suit therefore the same subject matter which is in dispute between the same parties under the same title cannot be trialed by the court

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¹Section 11- 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.

²Sir Lawrence Jenkins

again by the way of initiating subsequent suit before the court.

Essentials For The Application Of Section- 11:

The section 11 is a technical one and it should be proved with the following essentials:

1. **The Matter Must Be Directly And Substantially In Issue:** As the matter in issue is of two types namely collaterally and incidentally in issue and directly and substantially in issue. The former one is that matter which is not essential to be decided for final and comprehensive decision of suit, whereas the latter one which is a material proposition under order 14 of CPC.

The latter one is also inclusive of two types: a) the issues which has been raised by the parties in their former suit irrespective of the fact whether the issue is admitted or denied by the parties and there will be direct applicability of the principle of res judicata.

b) The issues which has not been raised by the parties in a former suit and there will be application of principle of constructive res judicata.

In a case **State Of U. P V. Nawab Hussain**³ the issue of the removal by subordinate authority must have been in the knowledge of the petitioner in the earlier suit and therefore it might and ought to have been raised by him in the former suit which he had did not raised. And hence the issue will be deemed to have been heard and finally decided in the former suit under the principle of constructive res judicata under explanation IV of section 11. Hence the constructive res judicata will apply to the subsequent suit.

This pre-requisite must be read with explanation III⁴ and explanation VII.⁵

2. **The Matter Must Be Between The Same Parties:** The former suit must have been a suit between the same parties or between parties under whom they or any of them claim. This pre-requisite must be read with Explanation VI.⁶

³ State of U.P v. Nawab Hussain 1977 AIR 1680 SC.

⁴ 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.

⁵ 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.

⁶ 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

The interchange of the position of the parties will not affect the provisions of res judicata, if the other elements are fulfilled.

In case of addition of new party to a suit as per general provision the res judicata will apply if the addition of new party does not affect the issues involved in a suit and no new material issue is raised. And in case addition of new party affects the issues involved in a suit, the principle of res judicata will not apply.

The word “between” as used in section 11 suggests that the conflict of interest in the former suit was between the same parties as it is between the present parties.

If the two parties were co-defendants in the former suit and it could be proved that with respect to the subject matter and cause of action of the former suit and there was a conflict of interest between the co-defendants, then in the present suit res judicata will apply.

3. **The Matters Must Be Ligating By The Same Parties Under The Same Title:** The parties to a suit must be under the same capacity with respect to the subject matter of the suit.

4. **The Former Suit Must Be Adjudicated By The Competent Court:** The competency of court will scrutinize on the basis of territorial jurisdiction, subject matter jurisdiction and pecuniary jurisdiction.

If the court which is not competent to try the subsequent suit, the res judicata will not apply. But if allowed, policy of res judicata will be defeated. And element of res judicata cannot be used to defeat the very purpose of res judicata.

For this purpose, explanation VIII has been added by amendment in 1976 to the section. The purpose of this amendment is to reduce the rigour of main section and it can be treated as an exception to the principle of res judicata though it can also be the saving clause. The rule is that if the former court is found to be incompetent to try the subsequent suit then res judicata will not apply as a rule.

However, before concluding one has to examine the reason behind such lack competency. As per the explanation, if the lack of competency was due to former court being a limited competency in that case res judicata will still be applied.

In such cases therefore, the examination must be:

- Whether the former court has competency to try the subsequent suit.
- If no, then examine as to why the incompetency is there-due to lack of pecuniary jurisdiction or due to lack of subject-matter.

section, be deemed to claim under the persons so litigating.

- Then examine whether that court had limited pecuniary or limited subject matter jurisdiction.
- If yes, and it is established that the former court is incompetent to try the subsequent suit due to the above then res judicata will still be applicable.

5. **The Matter Must Be Heard And Finally Decided:**

The word “heard” involves the recording of evidences and giving opportunities to the both the parties and giving the right to cross examinations and applying judicial mind by the court too.

The word “finally” refers to the matter which has been completely decided by the court, nothing is pending in the former court.

In case of preliminary decree which has been passed and the rights have been decided but final decree has not been passed, the principles of res judicata will apply to the preliminary decree which has been heard and finally decided irrespective of that the fact that the issue is within the same suit or in some other subsequent suit.

If the decree falls within the ambit of consent decree, ex-parte, if the decree has not been passed on the basis of merits rather on the basis of other reasons, the res judicata will not be applicable.

Res Judicata And Writ:

It was debatable whether the term ‘suit’ would include writs and whether the principle of res judicata would apply to writ petitions.⁷

*In the case of Daryao v. State of U.P.*⁸

Six writ petitions were presented before the Supreme Court entertaining this question. One of the writ petitions was examined in detail by the court.

Facts— The relevant facts are that the petitioners were tenants in the lands of which the respondents were proprietors. The petitioners had to leave the lands for some period owing to communal disturbances. When the petitioners returned, they found that the respondents were in unlawful possession of the land. The petitioners then filed ejectment suits under S. 180 of the U.P. Tenancy Act, 1939, and obtained a decree in their favour, which was confirmed in appeal, and thereby obtained possession of the said lands through Court.

The respondents preferred a second appeal before the Board of Revenue under S. 267 of the Act of 1939, wherein the Board allowed the appeal and held that the respondents were entitled to the possession of the lands in question.

High Court: The petitioners filed a writ petition under Art. 226 before the High Court. However, before the petition was filed, the Allahabad High Court had interpreted a particular section of the U.P.

Land Reforms Act, and such an interpretation was against the interests of the petitioners. Hence, in consequence of such interpretation, the petitioners could not press their petition, and it was consequently dismissed. The same section of the said Act was later amended, in consequence of which the petitioners approached the Supreme Court via writ petition under Art. 32.

The question that arose for consideration was that since the grounds were same as those raised before the Allahabad High Court, was the writ petition hit by res judicata? The petitioners placed reliance on the supremacy of A. 32 and it being above all other rights. They emphasized that a fundamental right cannot be whittled down by a technical rule of the C.P.C. as the Constitution is supreme.

Supreme Court: The Supreme Court was not impressed with the arguments of the petitioners. The court held that the rule of res judicata as embodied in S.11 of the Code did have some technical aspects, but was by and large based on high public policy that there should be a finality to litigation, and was also based upon the notion that no person should be vexed twice for the same cause. Due to the doctrine being based on these considerations it couldn't be treated as irrelevant or inadmissible even where writ petitions dealing with fundamental rights were concerned.

The other contention of the petitioners was that High Court and Supreme Court cannot be said to be courts of competent jurisdiction as they are different. This contention was also negated by the court held that the rule of res judicata as embodied in S. 11 of the Code did have some technical aspects, but was by and large based on high public policy that there should be a finality to litigation, and was also based upon the notion that no person should be vexed twice for the same cause. Due to the doctrine being based on these considerations it couldn't be treated as irrelevant or inadmissible even where writ petitions dealing with fundamental rights were concerned.

The other contention of the petitioners was that High Court and Supreme Court cannot be said to be courts of competent jurisdiction as they are different. This contention was also negated by the court and it held that the jurisdictions of the High Court under A. 226 and the Supreme Court under A. 32 were substantially the same, and even on that count, the application of res judicata couldn't be barred. Based on these reasons, the Supreme Court dismissed the writ petitions as being barred by res judicata arising from the previous decision of the High Court and laid down the rule that –

“We hold that if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter, and is dismissed the decision thus pronounced would continue to bind the parties unless

⁷Res Judicata and Code of Civil Procedure:

⁸ Daryao v. State of U.P AIR 1457, 1962 SCR (1) 574.

it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32.”

However, this view of the Supreme Court has been criticized by some jurists. They have argued that

the judiciary has reduced the fundamental right in Article 32 as one subject to the principle of res judicata and even laches, forgetting that there is no great fundamental principle than the right guaranteed in moving the court under Article 32. Article 32 is silent as to res judicata and limitation, but judicial legislation has introduced these needless aspects into writ jurisprudence.

It is submitted that the researcher agrees with the view of the Supreme Court. There has to be finality to litigation. Keeping in view the slow process of judicial remedy and frivolous litigation in our society, it is rather imperative that the principle of res judicata be given as liberal an interpretation and its scope should not be curtailed.

- **Res Judicata And Law Of Estoppel**

Res Judicata	Law Of Estoppel
<ul style="list-style-type: none"> • It applies directly upon the court and it bars the competency of court • It is based upon public policy, equity and justice • It aimed at preventing multiplicity of suits • It is a rule of procedure • It is based upon the policy that a party cannot be allowed to say the same thing again and again • It binds both the parties 	<ul style="list-style-type: none"> • It applies upon and it prohibits a party from taking a contrary stand • It is based upon equity and justice • It is aimed at preventing multiplicity of representations • It is a rule of evidence • Under this principle a party cannot say contrary things • It binds one party

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