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APPLICABILTY OF DOCTRINES IN JURISDICTION OF CIVIL COURTS

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ABSTRACT

A civil court has Jurisdiction to try all the suits of civil nature. Section 9 of Civil procedure Code states that Court has Jurisdiction to try all the suits of civil nature except if their cognizance is impliedly or expressly barred.Thus a civil court has Jurisdiction to try a suit if two conditions are fulfilled. They are the Suit should be of civil nature, the cognizance of suit should not be expressly or impliedly barred. But section 10 and 11, the doctrine of sub judice and doctrine of Res Judicata is an exception to it.According to Section10 no court shall proceed with trial until of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the court in which the previously instituted suit is pending and is competent to grant relief sought.Section11 of IPC embodies the doctrine of res judicata. According to the section11 no court shall try any suit in which the matter directly or substantially in issue is a former suit between same parties, litigating under the same title, in a court competent to try the suit in which issue has been subsequent raised and has been heard and finally decided by the court.Thus the Codification of civil procedure code lacks in providing single Jurisdiction single dispute. Thus to solve the problem of multiplicity of suits due to repetition of same suits, to avoid contrary verdicts due to concurrent Jurisdiction, the principles of Res Judicata and Principle of Sub judice is applied.

***KEYWORDS** : Civil, Res Judicata, Sub Judice, Court, Suit*

INTRODUCTION

A civil court has Jurisdiction to try all the suits of civil nature. Section 9 of Civil procedure Code states that Court has Jurisdiction to try all the suits of civil nature except if their cognizance is impliedly or expressly barred. But section 10 and 11, the doctrine of sub judice and doctrine of Res Judicata is an exception to it.

Suits of Civil Nature

For a civil court to have Jurisdiction to try a suit, the suit should be of **civil nature**. The word civil means private rights and remedies of a person as distinguished from criminal and political rights. The word nature means fundamental qualities of a person or thing.. Thus a civil court has Jurisdiction to try a suit if two conditions are fulfilled. They are

- The Suit should be of civil nature.
- The cognizance of the suit should not be expressly or impliedly barred

The expression of civil nature is wider than civil proceeding. Thus in a suit of civil nature, the question arises is the determination of civil rights and enforcement thereof and not the status of parties. The civil nature is determined only

by the subject-matter of the suit.

EXCEPTIONS TO TRY A SUIT OF CIVIL NATURE

Cognizance of Barred

The civil court cannot try a suit of civil nature when it is expressly or impliedly barred by the statute. A suit is said to be expressly barred when it is barred by the enactment of the time-being in force. Thus matters falling under the exclusive Jurisdiction of Revenue Courts, Code of Criminal Procedure or matters dealt with special tribunals such as Industrial tribunal, Election Tribunal, Revenue Tribunal, Income Tax Tribunal, Motor Accident claims tribunals or domestic tribunals are expressly barred from the cognizance of civil court.

Similarly, a suit is said to be impliedly barred when it is barred by the general principles of law. When a specific remedy is given by the Statute and creates an obligation, it cannot be enforced in any other manner other than the Statute. Thus no suits can be instituted for the recovery of costs incurred in a Criminal Procedure Code or enforcement of right upon a contract under the Indian Contract Act.

RES SUB-JUDICE

Nature and Scope

According to Section10, no court shall proceed with the trial until of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the court in which the previously instituted suit is pending and is competent to the grant relief sought.

The rule applies to the trial of suit and institution thereof. It also does not preclude a court from passing interim orders such as the grant of an injunction. It however, applies to appeals and revisions.

Object

The object of the rule contained in section10 is to prevent courts of con-current jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, same subject matter and relief.

In *Balkishan Vs. Kishan Lal*[1], the court observed that the policy of law is to confine a plaintiff to one litigation, thus avoiding the possibility of two contrary verdicts in respect of same relief.

Only when the matter of controversy is same the section10 applies.

In ***Ashi Jal Vs. Kushroo Rustom Dadyburjor***[2], the Supreme Court observed that when the matter of controversy is different the section has no application.

Thus this section intends to protect a person from a multiplicity of proceedings and to avoid conflicts.

Conditions

[1]ILR (1889) 11 All 148 9(FB)

[2](2013) 4 SCC 333

For the application of suits, the conditions to be satisfied are-

- There must be two suits, are previously instituted and other subsequently instituted.
- The matter in issue is subsequent must be directly and substantially in issue with pre instituted suit.
- Both the suits must be between same parties or their representatives.
- The previously instituted still must be pending in same court in which subsequent suit is brought in or any other court in India or in any other court beyond the limits of India established by Central Government or before Supreme Court.
- The court in which the previous suit is instituted must have jurisdiction to grant relief claimed in the subsequent suit.
- Such parties must be under the same title in both the suits.

In ***Mohan lal Chopra Vs. Seth Hirlal,***[3]the Supreme Court held thatSection10 is mandatory and there is no discrete left the court. Once the above conditions are satisfied, the court cannot proceed with the subsequently instituted suit.

RES JUDICATA

Res means subject-matter or dispute and judicata means adjudged, decided or adjudicated. Res Judicata means matter adjudged or dispute decided.

Doctrine

Section11 of IPC embodies the doctrine of res judicata. According to the section11 no court shall try any suit in which the matter directly or substantially in issue is a former suit between same parties, litigating under the same title, in a court competent to try the suit in which issue has been subsequent raised and has been heard and finally decided by the court.

The doctrine of res judicata is the rule of conclusiveness of judgment, decided there by fact or law. It states that once a matter is finally decided by the competent court, no party can be permitted to re-open in subsequent litigation. In absence of such a rule, there will be no end to litigation to parties.

The doctrine has accepted in all civilized legal systems under Roman law, a defendant would successfully contest a suit by a plaintiff on the ex caption res judicata. It was said one suit and one decision is enough for a single dispute.

In ***Satyadhyan Ghosal Vs. Deorajin Debi,***[4]the Supreme Court observed that the principle of res judicata is based upon giving finally to judicial decisions. It says that once a 'res' is 'judicata', it cannot be adjudged again. It applies between past and future litigation. When a matter, question of fact or of law is decided between two parties in one suit, the decision is final either because of no appeal was taken to higher court or appeal dismissed or no appeals lies, the party cannot be allowed to proceed the matter again or file a future suit.

[3] AIR 1962 SC 527
[4]**AIR 1960 SC 941**

Object

The doctrine is based upon two maxims-

- No man should be vexed twice for the same cause
- It is in the interest of the state that there should be an end to litigation.
- A judicial decision must be accepted as correct.

The doctrine of res judicata is the combined result of public policy reflected in maxims (b) and (c)and private justice in maxim (a)applies to all judicial proceeding whether civil or criminal.

If this rule is not applied that there would be no end to litigation, no security of persons and the rights of persons involved would be in greater confusion and greater justice will be covered under the law. In the absence of such doctrine, there would be an end to litigation.

In ***M. Nagabhushna vs. State of Karnataka***[5], the Supreme Court observed that the principle of Res Judicata is to promote honesty and fair and administration of Justice and to prevent abuse of process of law.

It is the fundamental policy and private interest. It applies to the civil suit, arbitration proceedings, taxation matter, industrial Adjudication, writ petition, administration matters, interim orders, criminal proceedings,etc.,

IN ***Daryao vs. State of UP***[6], the writ petition is filed under the High Court under Article 226 of the Constitution. The petition was dismissed. The same petition when filed under Article 32 of the Constitution for the same relief of same grounds. The Supreme Court applying the doctrine of Res Judicata and dismissed the petition.

CONCLUSIONS

Thus the Codification of civil procedure code lacks in providing single Jurisdiction single dispute. Thus to solve the problem of multiplicity of suits due to the repetition of same suits, to avoid contrary verdicts due to concurrent Jurisdiction, the principles of Res Judicata and Principle of Sub judice is applied.

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6. *(2011) 3 SCC 408*
7. *AIR 1961 SC 1457*

[5] (2011) 3 SCC 408
[6] AIR 1961 SC 1457