PRINCIPLES OF RES JUDICATA AND ITS OBJECTIVE AND APPLICATION

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What if a person is allowed to institute a suit again for the same matter against the same party whose matter has already been heard and finally decided by the competent court? Does not it will lead to uncertainty of legal relationships between parties and does not will create uncertainty of judicial decisions, also there are chances of conflict of judgment on the same matter, therefore, it is required to introduce a concept where one can be stopped from taking the same matter again for adjudication by court. Therefore, the concept of res judicata under section 11 of the Code of Civil Procedure, 1908 has been introduced.. Res Judicata literally means "a thing which has been decided". The doctrine operates as a bar to the trial of a subsequent suit on the same cause of action between the same parties. The doctrine is not merely a technical doctrine. It is a fundamental doctrine based on the principle of conclusiveness of the judgment and the finality of litigation. "One suit and one decision are enough for any single dispute." The doctrine has been accepted in all civilized legal systems.

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Introduction

Through this article, we tried to answer some questions relating to the principle of res judicata. The following questions have been answered in the article:

- Principles on which res judicata is based
- Purpose of Res Judicata
- Meaning of the phrase "No Court shall try"
- Constructive Res Judicata and inconsistent pleadings
- Application of res judicata on
    - On Co-plaintiffs and co-defendants
    - on appeal
    - on interim orders made during the proceeding
    - on writs under the Constitution of India
- Nature of decree if it was passed in ignorance of res judicata?
- What if the former court has erroneously decided any issue of law then in the subsequent suit will res judicata applies?
- Can a party waive his right to res judicata?
- Nature of the decree which is passed in ignorance of res sub judice?
- Difference of Res Judicata with the principle of Estoppel
- Difference of Res Judicata with the principle of res sub judice

Principles on which res judicata is based.

Res Judicata is based upon the principle of equity, justice, and a good conscience and it relates to public policy as well. It also relates to individual social beings. However, this principle has been

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derived from various Latin terms/maxims. These maxims are as follows –

1. **Exceptio res judicata:** previous judgment will be a bar to any subsequent suit.
2. **Nemo debit bis vexari pro uno eadem causa:** no person shall be vexed twice for the same cause.
3. **Interest republicae ut sit finis litium:** it is in the interest of the state that litigation shall be brought to an end.
4. Res judicata pro veritate occupitur: judicial decision shall be accepted as correct and final.

Purpose of Res Judicata

1. Purpose: to prevent multiplicity of proceedings and to create certainty of judicial decisions.
2. For example, Suit between A and B- is decided. So, there the party should be certain about the judgment. But if one believes that one may file the same matter again, so there will be no certainty of the judgment, and this will create chaos in society. And one will refrain from making improvisation (in property) and that will also result in the uncertainty of legal relations—and to do away with such a situation – the rule of Res Judicata came/inserted.
3. If Res Judicata doesn't apply then the parties will be uncertain about their legal status or legal relationship with respect to the subject matter of the suit and hence the successful party will be deterred (put off) from making any improvisation upon the sub-matter of the suit.
4. Res Judicata is based upon the principle of equity justice and good conscience, and it relates to public policy. It also relates to individual and social well-being.
5. It is related to public policy in the sense that it creates general stability of legal relationships and also certainty and faith in judicial decision and it is related to individual well-being in the sense that it gives certainty of legal status to the individual who has been successful in the suit.

Since Res Judicata is related to public policy it cannot be limited to section 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). Res Judicata is a broad principle, and its manifestation may be found at several places in the CPC. Section 11 is just one explicit dimension of Res Judicata. For example, an arbitration proceeding is not a suit. So, section 11 would not apply. But still broad principles of Res Judicata would apply.

Res Judicata and estoppel

The principle of res judicata is said to be one of the principles of Estoppel. There are following four kinds of estoppel. Estoppel by judgment or record is considered as res judicata. This principle has been discussed as follows -

Types of Estoppels

1. Estoppel by conduct
2. Estoppel by deed
3. Estoppel by pious
4. Estoppel by record or judgment- (known as res judicata)

Res Judicata is also based on the principle of estoppel by record. In a suit, the parties are expected to raise all their pleadings, contentions, and evidence and on the faith of that, the opposite party alters his position and takes the defence. Once the judgment has been passed the parties now cannot turn back and alter their positions. If the fact has been raised in the former suit, then also there will be a bar upon the subsequent suit and if the fact was not raised in the former suit but it might and ought to be raised as the party has knowledge or with due diligence, he could have had the knowledge, then also the bar will apply.

Meaning of the phrase "No Court shall try".

1. Means mandate is upon the competency to try. This means the court will not have the competency to try that suit and that will become a lack of sub-matter jurisdiction.
2. Generally, the court is not deprived of subject matter but only regarding this kind of suit. So,

competency to try this suit will not be there because that matter has already been heard and decided.

3. If the condition of section 11 is satisfied in a particular suit, then the court in the subsequent suit will be said to be incompetent to try that suit and such incompetency will mean that the court is not having the subject matter jurisdiction upon that particular suit and hence if the subsequent court tries the suit and passes the decree, the decree will be void as it was a case of lack of subject matter jurisdiction upon that suit.
4. Note: "Can't try" doesn't mean even issues etc cannot be settled as at least the issue of Res Judicata needs to be framed. i.e., to check whether the suit is based on res judicata or not. But it means that in the subsequent suit, there will be no hearing on the merits of the case but at least the preliminary issue has to be framed.

Constructive Res Judicata and inconsistent pleadings -

The provision for Constructive Res Judicata has been provided in Explanation IV of section 11 of CPC. It provides that 'any matter which might and ought to have been made a ground of defense or attack in such former suit, shall be deemed to have been a matter directly and substantially in issue in such suit.' From this explanation, we can say that

1. A party has the duty to raise all matters in issue which were known to him in a former suit or could have been known by him in the former suit with due diligence. It is presumed that he had raised all such issues and the court has decided all such issues. In the subsequent suit when that issue is raised the court will presume that the issue was heard and finally decided in the former suit and therefore constructive res judicata will apply to the issue in the subsequent suit.
2. For constructive res judicata it is essential to prove that the issue concerned might have been raised in the former suit and ought to have been raised in the former suit, therefore if for some legal reason, the issue might not have been raised in the former suit then in a subsequent suit on that issue res judicata would not apply.

Inconsistent pleading and pleading mutually destructive -

In a suit a party may have pleadings which are alternative in nature and the party can prove his legal right based on either of them. For instance, he can prove his ownership of property by way of succession as well as by way of will. He can also prove it by succession or purchase or can prove it by succession or gift. Such pleading should have been claimed in the former suit then in the subsequent suit constructive res judicata will apply.

If pleadings are inconsistent with each other i.e., they are apparently inconsistent (conflicting) with each other then also both pleadings can be claimed in the same suit. However, if the pleadings are based upon such facts which are not only inconsistent rather, they are mutually destructive then they cannot be claimed in the same suit i.e., if the evidence required to prove one such pleading is destructive of the other pleading then the two cannot be claimed together unless the party proves that he was not aware of one of the pleadings.

Every inconsistent pleading is not mutually destructive. Inconsistent is of such an extent that they cannot sustain together then it can be said that inconsistent pleading in such a case could not have been raised.

Questions dealing with the application of res judicata on –

- Can res judicata be appliable between co-plaintiff and co-defendant?

We cannot outrightly say whether the principle of res judicata will apply between co-plaintiff and co-defendant or not. Rather we must examine whether the opposite parties to the present suit were co-plaintiffs or co-defendants in the former suit and there it has to be examined whether in the former suit there was a conflict of interest between the parties. If an actual conflict is found in the former suit with respect to the matter in issue (ex. - where one party is pro

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forma defendant), then res judicata will be applicable in the subsequent suit. If there is no such conflict, then res judicata will not apply between co-plaintiff and co-defendant.

Note: as per section 44 IEA- if the former suit was obtained by fraud or collusion, then that decree will not be binding.

- Whether res judicata apply upon appeals as well?

An appeal is considered to be a continuation of the suit. So if res judicata applies upon the suit, it should also be applicable on appeal as well.

Once the appeal is filed and it is heard and finally decided on merits. Later on, another appeal is filed. Now subsequent appeal will be called a subsequent suit and the former appeal as a former suit for the purpose of section 11.

When the matter goes into appeal so suit which was decided earlier, is once again opened in appellate court and in appeal, the matters become sub judice. So, it will be said that what was res judicata in the trial court, becomes res judice in the appellate court.

- What will be the consequence of the dismissal of the appeal?

The trial court's judgment will become final and therefore what was res sub judice upon filling of appeal, now becomes res judicata.

- Dismissal of appeal can be

1 On some technical ground: for e.g., the appeal is barred by limitation or dismissed on the ground of non-prosecution (i.e., need to furnish some document but the party did not furnish or attach those documents or didn't submit the required court fee.)

Non-prosecution means- the appellate is not interested in prosecuting the appeal because not file the required document.Here also the judgment of the trial court becomes final and therefore res judicata will apply.

2 On merits: i.e., the appellate court has properly heard the parties i.e., hearing of parties on evidence etc.

Thus, if the appeal is dismissed either on merits or on technical grounds, the trial court judgment becomes final and now once again becomes res judicata. But the decision of the trial court must be upon merits.

The Supreme Court in **Narhari v Shankar (1953 AIR 419, 1950 SCR 75)** held that where the two appeals have arisen from the same suit and therefore the identities of both appeals are not distinct from each other and therefore one of the appeals cannot be considered to be distinct from the other and hence one of the appeals cannot be considered to be the former suit with respect to the other – and hence res judicata would not apply.

Sheodan Singh vs Smt. Daryao Kunwar (AIR 1966 SC 1332)

The Supreme Court held that -

1. The facts of Narhari v Shankar have to be distinguished from the facts of the Sheodan Singh case. In the Sheodan Singh case, there were several suits that were consolidated and various appeals were filed from the various suits therefore they had distinct identities and if one of the appeals was dismissed it will be considered to be a former suit for the purpose of res judicata. Whereas in Narhari v Shankar the appeals were two but the original suit was only one and therefore the various appeals didn't have distinct identities. Hence if an appeal is dismissed, it cannot be said to be a former suit for the other pending appeal.
2. It was also held that the trial court had decided the suits on merits then if more than one appeal have been filed by a party against the various decrees then if some of the appeals have been dismissed on technical grounds the result will be that the trial courts decree will become final which was on merits and hence it shall be deemed that the appellate court has heard and finally decided the appeal even though the appellate court actually didn't decide the appeal on merits. If it is held otherwise, then the consequence would be that the losing party files an appeal and deliberately gets it dismissed. The consequence is that the trial court's judgment will not become final and the matter will not be res judicata anymore. And thus, the losing party can file a fresh suit that would be illogical or absurd.

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For Sheodan Singh's judgment to apply it is essential that:

1. There was more than one suit consolidated in the same trial and appeals were filed from different decrees.
2. All the appeals were filed by the same party.
3. That the trial court's judgment was on merits.

- Will the interim order of the court made during the proceeding apply as res judicata?

We cannot outrightly say whether res judicata applies or not as that would depend upon whether the issue depends upon the same facts which are subject to change or not.. Res judicata may apply upon the interim issues if the issue is such is dependent upon facts that are not subject to change for instance, the issues of jurisdiction of the court, the bar of limitation, valuation of suit, impalement of party, amendment of pleadings etc are such issues which are not subject to change and therefore once such issue has been decided, if it subsequent heard in same suit the decision will not change as the facts are the same and therefore on such issues res judicata will apply. However, if the issues are such as are dependent upon facts that are subject to change then in the same suit if the issue is raised subsequently res judicata would not apply.

- Res Judicata on writs under the Constitution of India

A writ is not considered to be a suit and therefore directly section 11 CPC will not apply. However, the broad principle of res judicata will be applicable. But if the writ was decided inlimine i.e. without hearing of the parties it cannot be said to have been heard and finally decided and hence res judicata would not apply. If the writ was withdrawn and later on another writ is filed then res judicata would not apply but estoppel would apply.

Nature of decree if it was passed in ignorance of res judicata?

If there are two decree and in the second suit the defendant had not raised the plea of res judicata then the second decree is also valid and since the defendant fails to raise the plea of res judicata in the second suit so estoppel will apply upon him. And the second decree will be valid. However, if he is able to prove the plea of res judicata in appeal provided the appellate court allows him to do so then the second decree will be void. And also if he is able to prove that the second decree was obtained by fraud then also the second decree will be void. Accordingly, the first decree will be valid.

What if the former court has erroneously decided any issue of law, then in the subsequent suit will res judicata applies?

The general rule is that even if a decision was wrong, res judicata would apply upon subsequent suit and the party against whom the former decree was passed cannot claim the decision in former suit was wrong. In that case, he has the option of going in appeal or filing review but he cannot file fresh suit to challenge suit decree on that ground.

Can a party waive his right to res judicata?

Once res judicata has been proved the court per se becomes incompetent to try the suit and once the court becomes incompetent thereafter a party unilaterally or by agreement cannot confer competency upon that court.

What will be the nature of the decree which is passed in ignorance of res sub judice?

Res sub judice is only a technical matter and the subsequent court doesn't become incompetent to try the subsequent suit rather the only mandate is that the subsequent court shall stay the trial of the subsequent suit if conditions of sec 10 are fulfilled. Thus, if a subsequent court tries the suit despite res sub judice and decided it, the decree will not be void as the subsequent court was not incompetent to try it and there was no inherent lack of competency. Rather the subsequent decree will apply as res judicata upon the former pending suit.

Note: in order to apply res sub judice, it is essential that what is pending before the court should be a suit and not just any other proceeding (For eg - application to sue as forma pauperis so till the application hearing going on it is not a suit, so in such case no stay on the subsequent suit.)

Difference between res judicata and estoppel

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1. Res judicata applies directly upon the court as it takes away the very competency of the court to try the suit whereas estoppel applies upon a party.
2. res judicata is based upon the principle of public policy, equity, and justice whereas estoppel is based upon only equity and justice i.e., estoppel only between two parties and no public policy involved.
3. The purpose of res judicata is to prevent a multiplicity of suits whereas estoppel is related to preventing a multiplicity of representations.
4. Res judicata is the rule of procedure whereas estoppel i.e., rule of evidence under 115 Indian Evidence Act.
5. Res judicata is based upon the principle that a party cannot say the same thing again and again whereas in estoppel the principle is that the party cannot say the opposite things again and again.
6. Res judicata binds the court and thereby it binds both parties whereas estoppel is between only one party.

Difference between res sub judice and res judicata

1. Res judicata prohibits a second trial of the same dispute while res sub judice prohibits proceedings of two parallel suits between parties.
2. Defence of res judicata can be taken in a written statement whereas in res judice defence cannot be taken in a written statement.
3. Res judicata applies to suits as well as issues but res sub judice applies only to suits.
4. Res judicata applies to the matters already adjudicated upon whereas res sub judice applies to proceeding pending in the court.
5. Res judicata bars the trial of a suit whereas res sub judice stays the latter suit instituted.
6. Res judicata denies in section 11 whereas res sub judice in section 10.

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