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## Res Judicata

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### INTRODUCTION

Res Judicata in Latin means “a matter (already) judged.” It is also called as Claim Preclusion. It is a common law practice meant to bar re-litigation of cases between the same parties in the court. "Res judicata pro veritate occipitur" is the full latin maxim which has, over the years, shrunk to mere "Res Judicata". It comes under S.11. Of The Civil Procedure Code – 1908.

Res Judicata is a phrase which has been evolved from a Latin maxim, which stands for ‘the thing has been judged’, meaning thereby that the issue before the court has already been decided by another court, between the same parties. Therefore, the court will dismiss the case before it as being useless. Res Judicata as a concept is applicable both in case of Civil as well as the Criminal legal system. The term is also used to mean as to ‘bar re-litigation’ of such cases between the same parties, which is different between the two legal systems. Once a final judgment has been announced in a lawsuit, the subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one, they would apply the Res Judicata doctrine ‘to preserve the effect of the first judgment’. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources and time of the Judicial System.

The legal concepts of res judicata arose as a method of preventing injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. Res judicata does not merely prevent future judgments from contradicting earlier ones but also prevents litigants from multiplying judgment, and confusion.

### HISTORY

The concept of Res Judicata finds its evolution from the English Common Law system, being derived from the overriding concept of judicial economy, consistency, and finality. From the common law, it got included in the Code of Civil Procedure and which was later as a whole was adopted by the Indian legal system.

From the Civil Procedure Code, the Administrative Law witnesses its applicability. Then, slowly but steadily the other acts and statutes also started to admit the concept of Res Judicata within its ambit. S.11 .Res Judicata.

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 the issues have been substantially raised, and has been heard and finally decided by such courts.

The 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 purpose of this section, the competence of a 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 the other.

Explanation IV: Any matter which might and ought to have been made the 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.

Explanation V : Any relief claimed in the plant, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

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 provision of this section shall apply to proceedings for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as reference, 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 issues, 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.

### **THE DOCTRINE**

The doctrine of res judicata is very ancient and was accepted by Hindu and Muslim jurists. Under the Roman Law, it was known as exception rei judicatae which signifies 'previous judgment'. Under the English law, the principle is interesting reipublicae ut sit finis litium, i.e the interest of the state lies in that there should be a limitation to lawsuits. Countries of the European continent and also the common law countries have accepted that a matter once brought to trial should not be tried again except by way of appeal. Formerly, the doctrine was known as the plea of former judgment. The leading case on the subject is the Duchess of Kingstone's case.

From the variety of cases relative to judgment being given in evidence in civil suits, these two deductions seem to follow as generally true: first that the judgment of a court of concurrent jurisdiction, directly upon the point, is a plea. a bar or as evidence conclusive, between the same parties, upon the same matter, directly in question in another court: secondly, that the judgment of court of exclusive jurisdiction, directly on the point, is, in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court, for a different purpose. But neither the judgment of a court, of concurrent or exclusive jurisdiction, is evidence of any matter which came collaterally in question, though within their jurisdiction nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment.

This passage summarises the law enacted in this section. The rule of res judicata is readily distinguished from the rule in s. 10, for the latter, relates to a res subjudice that is, a matter which is pending judicial inquiry; while the rule in the present section relates to res judicata, that is, a matter adjudicated upon or a matter on which judgment has been pronounced. Section 10 bars the trial of a suit in which the matter directly and substantially in issue is pending adjudication in a previous suit. The present section bars the trial of a suit on an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit but does not affect the jurisdiction of the court.

Thus, if A sues B for damage for breach of contract and the suit is dismissed, a subsequent suit by A against B for damages for breach of contract is barred. This is the rule of res judicata stated in its simplest form. The question of A's right to claim damages from B having decided in the previous suit becomes res judicata, and it cannot, therefore, be tried in another suit. It would be useless and vexatious to subject B to another suit for the same cause. Moreover, public policy requires that there should be an end to litigation. The question whether the decision is correct or erroneous has no bearing on the question whether it operates or does not operate as res judicata, otherwise, every decision would be impugned as erroneous and there would be no finality.

The rule of res judicata may thus be governed by two grounds – one, the hardship to the individual that he should not be vexed twice for the same cause and the other, public policy, that is in the interest of the state that there should be an end to a litigation. Phrasing it differently, it may be said that every suit must be sustained by a cause of action and there is no cause of action to sustain by a cause of action to sustain the second suit of A, it is merged in the first.

### **OBJECTIVE OF RES JUDICATA**

The doctrine of res judicata is based on the following three maxims:

1. 'Nemo debet bis vexari pro una et eadem causa' which means none should be vexed twice for the same cause;
2. 'Interest reipublicae ut sit finis litium' which means that it is in the interest of the state that there should be an end to litigation;
3. 'Res judicata pro veritate accipitur' which means that a judicial decision must be accepted as correct,

The first ground is based on private interest whereas the other two take care of public policy and larger interest of the society.

## **BINDING FACTORS**

- Ø identity in the thing at suit;
- Ø identity of the cause at suit;
- Ø identity of the parties to the action;
- Ø identity in the designation of the parties involved;
- Ø whether the judgment was final;
- Ø whether the parties were given full and fair opportunity to be heard on the issue.

Regarding designation of the parties involved, a person may be involved in an action while filling a given office and may subsequently initiate the same action in a differing capacity. In that case, Res Judicata would not be available as a defense unless the defendant could show that the differing designations were not legitimate and sufficient.

Therefore, Res Judicata in a nutshell is a judicial concept wherein the Courts do not allow a petition to be filed in the same or to the other Court for the doctrine of Res Judicata would apply and the party would not be allowed to file the petition or to continue the petition (as the case may be).

## **ESSENTIAL TO RES- JUDICATA**

For the application of this section, the following conditions must be satisfied:

1. There must be two suits, one previously instituted and the other subsequently instituted.
2. The matter in issue in the subsequent suit must be directly on the issue in the previous suit.
3. Both the suits must be between the same parties or their representatives.
4. The previously instituted suit must be pending in the same court in which subsequent suit is brought in any other court or in court beyond the limits of India continued by Central Government or SC.
5. The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.
6. Such parties must be litigating under the same title in both the suits.

## **INGREDIENTS OF S.11 CPC – Rule of Conclusive Judgment**

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 claiming under them, litigating under the same title
- In a court competent to try such suit
- Or a suit in which the matter has been subsequently raised
- And has been heard and finally decided by such court

The following are also to be taken into account:

- 1) Former suit denotes a suit which has been decided prior to the suit in question, and not if it was prior to this suit. i.e. the cut-off is the date of judgment and not the date of institution of the suit.
- 2) Competency of a Court is to be decided, irrespective of the right to appeal from a former suit.
- 3) The matter referred to in this suit must have been alleged by one party and either accepted or refused by the other party (expressly/impliedly).
- 4) Any matter which might or ought to have been made the ground of attack/defiance in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit (Constructive Res Judicata).
- 5) If any relief was claimed in the plaint and was not granted expressly, it would be deemed to have been refused in such former suit.
- 6) When persons litigate bonafide in respect of a public/private right claimed in common for themselves and others, all persons interested for the purpose of S.11 will be deemed as claiming under persons litigating.
- 7) It is also to be remembered that, a Court of limited jurisdiction where the former suit was instituted and decided upon, shall operate as Res Judicata, even if the Court of limited jurisdiction is not competent to try the subsequent suit.
- 8) This S.11 applies to execution proceedings also.

## **RES JUDICATA AS A CONCEPTS UNDER ADMINISTRATIVE LAW**

Administrative law is an often-misunderstood subject. As the name suggests, Administrative Law deals with the structure, powers and functions of the organs of administration, the limits on their powers, the methods and the procedures followed by them in exercising their powers and functions, the method by which their powers are controlled.

Basically, the Doctrine of Res Judicata is applicable to the Code of Civil Procedure. But, at times, in many other statutes, there is a use of the doctrine. As we know that the work or the role played by the Administrative Law is that of a watchdog. The Administrative Law sees that there is no use of power which has a malicious intention. The Administrative Law is there to see that there is an improvement in the society without any hurdles and the administration performs its duty in an honest manner.

In Administrative Law, the use of this doctrine is that it administers as to how well the Judiciary does its work, how efficiently the Judiciary disposes of the case and the doctrine makes itself applicable where there is more than one petition filed in the same or in the other court of India.

The parties can file another suit in another court, just to harass and malign the reputation of the opposite party or can do so for receiving compensation twice from the different courts. Therefore, just to prevent such over-loads and extra cases in the court's kitty, Res Judicata holds a big responsibility.

A comparison of Res Judicata as a concept in between Administrative Law and the other laws. In Administrative Law, the doctrine works as a working principle and has been adopted or taken from Code of Civil Procedure. In C.P.C., as we have discussed above, Section 11 has a big role to be played in the civil courts of India. Even in International Law which is applicable in The International Court of Justice, there to Section 38 (1) (c) is dedicated towards the doctrine of Res Judicata.

### **THE SECTION READ AS FOLLOW**

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply.
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The principles of Res Judicata even apply to the Constitution matters. The rule of Res Judicata is basically a rule of private law but has been transposed into the area of writ proceedings as well. Thus, the person is debarred from taking one proceeding after another and urging new grounds every time, in respect of one and the same ground every time to cause harassment to the opposite party. Therefore, a subsequent writ petition cannot be moved against the judgment of a petition in a particular High Court. The judgment can be of any nature and of any High Court, but that order cannot be in any sense be challenged.

The Criminal Law and to be more specific, Evidence Law also talks about the doctrine of Res Judicata but in the same context as that has been used in C.P.C. Therefore, apart from the Administrative Law and C.P.C., there are some few other laws which talk about the role of Res Judicata in the statute.

### **NATURE OF RES- JUDICATA**

The Doctrine of Res Judicata strives to strike a balance between the two largely separated poles. One pit assures an efficient judicial system that renders final judgments with certainty and prevents the inequity of a defendant having to defend the same claim or issue of law repeatedly. On the other hand, it protects the plaintiff's interest in having issues and claims fully and fairly litigated.

The basic point involved in the Nature of the doctrine of Res Judicata is that the doctrine tries to bring in natural and fair justice to the parties and that too by barring the other party to file a multiple numbers of suits either for justice or for harassing the other party. Res judicata includes two related concepts: claim preclusion, and issue preclusion (also called collateral estoppel), though sometimes Res Judicata is used more narrowly to mean only claim preclusion. Claim preclusion focuses on barring a suit from being brought again on a legal cause of action that has already been finally decided between the parties. Issue preclusion bars the relitigation of factual issues that have already been necessarily determined by a judge or jury as part of an earlier claim.

It is often difficult to determine which, if either, of these, apply to later lawsuits that are seemingly related because many causes of action can apply to the same factual situation and vice versa. Therefore, the nature of the doctrine of Res

Judicata is to enable the Courts to deliver the justice and then to dismiss or freeze the other active suits which are of the very same nature although is at a different stage. Such a role enables the Court to dismiss the matter from its jurisdiction and also the jurisdiction of the other Courts which are at the same level.

Also, that Res Judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as it travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which it to challenge a judgment rather than trying to start a new trial, and once the appeals process is exhausted or waived, Res Judicata will apply even to a judgment that is contrary to law.

### **SCOPE OF RES- JUDICATA**

Res- judicata includes two related concepts: claim preclusion and issue preclusion (also called collateral estoppels or issue estoppels) through sometime res judicata is used more narrowly to mean only claim preclusion.

- Claim preclusion bars a suit from being brought again on an event which was the subject of a previous legal cause of action that has already been finally decided between the parties of those in relation with a party.
- Issue preclusion bars the relitigation of issues of fact or law that have already been necessarily determined by a judge or jury as a part of an earlier case.
- It is often difficult to determine which, if either, of these concepts, apply to later lawsuits that are seemingly related because many causes of action can supply to the same factual situation and vice versa. The scope of an earlier judgment is probably the most difficult question that judges must revolve in applying res judicata. Sometimes merely part of the action will be affected. For example, a single claim may be struck from a complaint, or a single factual issue may be removed from reconsideration in the new trial.

For example, In the case of Satyadhyhan Ghosal v. Smt. Deorajin Debi, where the principle of Res Judicata is invoked in the case of the different stages of proceedings in the same suit the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached as well as the specific provision made on matters touching such decisions are some of the factors to be considered before the principle is held to be applicable. Order IX Rule 7 does not put an- end to the litigation nor does it involve the determination of any issues in controversy in the suit. A decision or direction in an interlocutory proceeding of the type provided for by Order IX Rule 7 is not of the kind which can operate as Res Judicata so as to bar the hearing on the merits of an application under Order IX Rule 13

### **RES JUDICATA AND ESTOPPEL**

Res judicata is sometimes treated as a part of the doctrine of estoppels, but the two are essentially different. Estoppel is a part of the law of evidence and prevents a person from saying one thing at one time and contradicting it later, while res judicata precludes a man from avowing the same thing in successive litigation. The operation of the doctrine of res judicata is the transformation of a question of fact into a question of law. By applying the principles of res judicata, a court cannot be vested with a jurisdiction not vested by the law.

Mahmud J in Sita Ram v Amir Begam said: Perhaps the shortest way to describe the difference between the plea of res judicata and an estoppels, is to say that whilst the former prohibits the court from entering into an inquiry at all as to matter already adjudicated upon, the latter prohibits a party after the inquiry has already been entered upon, from providing anything which would contradict his own previous declarations or act, to the prejudice of another party who, relying upon those declarations or acts, has altered his position. In other words, res judicata prohibits an inquiry in limine whilst an estoppels is only a piece of evidence.

### **SUIT**

Section 11 applies in terms, to cases where the matter in issue in a subsequent 'suit' was an issue in a former 'suit'. A suit is a proceeding which is commenced by a plaint (s.26). By virtue of explanation V11 added by the Amendment, 1976, the section is made applicable to execution proceedings. A proceeding under s. 84(1) of Madras Hindu Religious Endowment Act, 1927 is a suit, and so is one under s. 36 of the Bengal Moneylenders Act, 1936 to reopen a personal decree. There is no res judicata when the Government decides whether or not a dispute should be referred to an Industrial Tribunal under the Industrial Disputes Act, 1947.

### **FORMER SUIT**

The expression 'former suit' means a previously decided suit, and the same interpretation applies to appeals. The explanation I confirm previous decisions to the same effect. It does not matter that the previously decided suit was instituted subsequently or decided during the pendency of an appeal or tried as a revisional application in the subsequent suit.

### **TWO STAGES OF the SAME SUIT**

The principle of res judicata applies also as between two stages of the same litigation, to the extent, that where a court (whether trial court or a higher court) has, at an earlier stage of the suit decided the matter one way, the parties, cannot

be allowed to re-agitate the same matter at a subsequent stage of the suit. This may not, however, apply to an interlocutory order.

Once an order made in the course of proceeding becomes final, it would be binding at the subsequent stage of that proceeding. Contention originally raised and overruled by the court at the time of the passing of the preliminary decree for partition, cannot be agitated again at the time of passing final decree.

In a suit for specific performance by the subsequent purchaser, the application for implement by the erstwhile purchasers was dismissed on objection by subsequent purchasers. A separate suit for specific performance was decreed in favour of the earlier purchaser by the subsequent purchaser I the same suit was held to be barred by res judicata.

In a case where warrant of attachment was issued in Execution and thereafter the judgment – debater raised objection against execution, it was held by the supreme court that failure to raise objection earlier thereby allowing the preliminary stage to come to an end would bar objection at subsequent stage after issuance of warrant of attachment by the principle of constructive res judicata.

#### **APPLICATION OF RES JUDICATA**

1) Can be invoked in a subsequent stage of same proceedings. *Y. B. Patil V Y. L. Patil*: held once an order made in course of proceedings becomes final, it would be binding upon the parties at a subsequent stage of the same proceedings.

2) Can apply against Co-Defendants. *Mahaboob Sahab V Syed Ismail*: held if the following four conditions are satisfied Res Judicata will apply

- a) There must be a conflict of interest between the defendants concerned.
- b) It must be necessary to decide such conflicts, in order to give relief to the plaintiff.
- c) The questions between the defendants to be finally decided.
- d) Co-defendants to be necessary and proper parties to the suit

3) Can apply between Co-Plaintiffs

*Ahamed V. Syed Meharban*: held if the following four conditions are satisfied Res Judicata will apply

- a) There must be a conflict of interest between the co-plaintiffs.
- b) It must be necessary to decide such conflicts, in order to give relief to the plaintiff.
- c) The questions between the plaintiffs to be finally decided.

#### **NON APPLICATION OF RES JUDICATA**

1) Habeas Corpus Petitions

*Sunil Dutt V Union of India*: Held that habeas corpus, filed under fresh grounds and changed circumstances will not be barred by a previous such petition.

2) Dismissal of Writ Petition in Limine

*Pujaril Bal V Madan Gopal*: Held Res Judicata not applicable when dismissed in limine (without speaking orders) or on grounds of laches or availability of alternative remedies.

1) Matter collaterally and incidentally in issue doesn't operate as Res Judicata – *Sayed Mhd V. Musa Ummer*

4) Res Judicata not applicable to IT Proceedings or fixing of fair rent proceedings

#### **EXCEPTION TO RES JUDICATA**

However, there are limited exceptions to Res Judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions - usually called collateral attacks - are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or competence to issue it. A collateral attack is more likely to be available (and to succeed) in judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognise the judgment of a foreign court.

In addition, in cases involving due process, cases that appear to be Res Judicata may be re-litigated. An instance would be the establishment of a right to counsel. People who have had their liberty taken away (that is, imprisoned) may be allowed to be re-tried with a counselor as a matter of fairness.

Judicial Pronouncements in relation to Res Judicata.

In the case of Jallur Venkata Seshayya vs. Thadviconda Koteswara Rao, a suit was filed in the Court for the purpose of declaring certain temples public temples and for setting aside alienation of endowed property by the manager thereof. A similar suit was dismissed by the Court two years ago and the plaintiffs here contended that it was the gross negligence on the part of the plaintiffs (of the previous suit) and hence the doctrine of Res Judicata should not be applied. But, the Privy Council said that finding of a gross negligence by the trial court was far from a finding of intentional suppression of the documents, which would amount, to want of bona fide or collusion on the part of the plaintiffs in the prior suit. There is no evidence in the suit establishing either want of bona fide or collusion on the part of plaintiffs as res judicata.

#### **FAILURE TO APPLY**

When a subsequent court fails to apply res judicata and renders a contradictory verdict on the same claim or issue, if a third court is faced with the same case, it will likely apply a “last in time” rule, giving effect only to the later judgment, even though the result came out differently the second time. This situation is not unheard of, as it is typically the responsibility of the parties to the suit to bring the earlier case to the judges attention, and the judge must decide how broadly to apply it, or whether to recognize it in the first place.

#### **CRITICISMS**

Res Judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as the suit travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which to challenge a judgment rather than trying to start a new trial. Once the appeals process is exhausted or waived, Res Judicata will apply even to a judgment that is contrary to law.

There are limited exceptions to Res Judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions—usually called collateral attacks—are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or on the competence of the earlier court to issue that decision. A collateral attack is more likely to be available (and to succeed) in judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognize the judgment of a foreign court. In addition, in matters involving due process, cases that appear to be Res Judicata may be re-litigated. An example would be the establishment of a right to counsel. People who have had liberty taken away (i.e., imprisoned) may be allowed to be re-tried with a counselor as a matter of fairness.

#### **CONCLUSION**

The Doctrine of Res Judicata can be understood as something which restrains either party to move the clock back during the pendency of the proceedings. The extent of Res Judicata is very-very wide and it includes a lot of things which even includes Public Interest Litigations. This doctrine is applicable even outside the Code of Civil Procedure and covers a lot of areas which are related to the society and people. The scope and the extent has widened with the passage of time and the Supreme Court has elongated the areas with its judgment.

#### **REFERENCE**

1. Civil Procedure Code of 1908
2. Law on Res judicata
3. Legal Encyclopedia