



**DELHI LAW ACADEMY**

**CIVIL PROCEDURE CODE**

**Section 11**

**RES JUDICATA**

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## CIVIL PROCEDURE CODE : RES JUDICATA

Part 1: Section 11 CPC

Part 2: The general principle of res judicata

Part 3: Judicial expansion of the scope of section 11

Part 4: Explanations to section 11 and their effect

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### Section 11

- No Court **shall try** any suit
  - in which the matter directly and substantially in issue
  - has been directly and substantially in issue in a **former suit** between same parties
    - in a Court competent to try such subsequent suit and
  - has been *heard and finally decided* by such Court

### INGREDIENTS OF SECTION 11:

- There was a **former suit** and there is a **subsequent suit**
- The matter in issue in the subsequent suit is the same as in the former suit
- Parties in the subsequent suit are either the same as in the former suit or claim from them
- Former suit was heard and finally decided by the former court
- Former court should be competent to try the subsequent suit

### Former court should be competent to try the subsequent suit?

#### Illustration:

- In a suit for partition, the value of the subject matter of the former suit was Rs. 50 lakhs and the **former court** was the District Court and



- the value of the subject matter of the **subsequent suit** is Rs. 5 crores and the subsequent court is the High Court because the value of the subject matter of the **subsequent suit exceeds the** pecuniary limit of the District Court
- In this case, the former court [the District Court] is not competent to try the subsequent suit because of its pecuniary limit:

**Effect: section 11 is not applicable**

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### **Literal meaning of res judicata**

- The literal meaning of **res** is everything that may form an object of rights and includes an object, subject matter or status” and **res judicata** literally means “a matter adjudged, a thing judicially decided”.

### **The Law of Res Judicata : PRINCIPLE**

- The principle of estoppel per rem judicatam is a rule of evidence.
- It is “the broader rule of evidence which prohibits the reassertion of a cause of action”.

Source: [Marginson v. Blackburn Borough Council](#)

### **Basis of the doctrine of res judicata:**

- This doctrine is based on two theories:
  - finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy and
  - interest of the individual that he should be protected from multiplication of litigation.

### **OBJECTIVE**

- It serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not



permissible to obtain a second judgment for the same civil relief on the same cause of action.

## **The general principle of res judicata**

- It is the cause of action which gives rise to an action. A cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts.
- This is what is known as the **general principle of res judicata**.

## **Constructive res judicata**

- Res judicata is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.
- This rule has sometimes been referred to as **constructive res judicata** which, in reality, is an aspect or amplification of the general principle.

## **Section 11 CPC**

- These simple but efficacious rules of evidence have culminated in the present Section 11 of the Code of Civil Procedure, 1908.

## **SCOPE OF SECTION 11**

- Section 11 of the Code of Civil Procedure relates to suits and former suits, and has, in terms, no direct application to a petition for the issue of a high prerogative writ.



## APPLICABILITY TO WRITS

- The general principles of res judicata and constructive res judicata have been acted upon in cases of renewed applications for a writ.

### (1) **A writ petition followed by a regular suit**

#### Question:

- Whether a decision of the High Court on merits on a certain matter after contest, in a writ petition under Article 226, operates as res judicata in a regular suit with respect to the same matter between the same parties?

#### Ans:

- Yes:
- Authority: [Gulab Chand Chhotala Parikh v. State of Bombay](#)

#### Reasoning:

- On the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case, by a Court competent to decide it, will operate as res judicata in a subsequent regular suit.

### (2) **A writ petition followed by another writ petition**

#### Question:

- whether the principle of constructive res judicata was applicable to writ petitions?

#### Ans:

- Yes:
- Authority: [Devilal Modi v. Sales Tax Officer Ratlam](#)

#### Reasoning:

- If the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy



### (3) **A writ petition followed by a regular suit**

#### Question

- Whether a new plea not taken in the original writ petition could be taken in a subsequent suit before a civil court?

#### Ans:

- No:
- Authority: **State of U.P. v. Nawab Hussain**

#### Reasoning:

- In the writ petition filed in the High Court the plea that by virtue of Article 311(1) of the Constitution he could not be dismissed by the DIG as he had been appointed by the Inspector-General of Police was not raised. Since this was an important plea which was within the knowledge of the party and could well have been taken in the writ petition, but he contended himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide.
- It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata.

### **LIMITATIONS OF SECTION 11**

- **The provisions of Section 11 CPC are not exhaustive** with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit.
- On the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case, by a Court competent to decide it, will operate as res judicata in a subsequent regular suit.



- It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter.
- *The nature of the former proceeding is immaterial.*

Authority: **Gulabchand Chhotalal Parikh v. State of Bombay [1964 SC]**

## Question

- **Whether res judicata applies between different stages of the same suit?**

## Ans:

- The principle applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party, it cannot be allowed to be reargued by him at a subsequent stage in the same suit or proceedings.

Source: **CV Rajendran v. Mohammed Kunhi [2002 SC]**

## **Cases where res judicata is not applicable**

### **Case 1**

- A jurisdictional question if wrongly decided would not attract the principle of res judicata. When an order is passed without jurisdiction the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking a procedural principle.

Source: **Sonipat Cooperative Sugar Mills v. Ajit Singh [2005 SC]**

### **Case 2**

- Dismissal of writ petition and SLP **in limine** would not operate as res judicata in subsequent suit on same cause of action.

### **Case 3**

- First writ petition was filed on the ground of apprehended bias. Subsequent second petition was filed on allegations of actual bias. The second petition is not barred by res judicata.

Source: **GN Nayak v. Goa University [2002 SC]**



## Case 4

- The cause of action in both the suits was based upon **title in the suit land** and was akin in all the cases, yet, in as much as the earlier two suits were **dismissed as withdrawn** with permission to file fresh on the same cause of action, third suit will not be barred by any principle of law.

Source: [Harbhagwan v. Smt. Punni Devi \[1999 P&H\]](#)

### Question:

- **Whether res judicata binds co-defendants?**

### Ans:

- Yes.

### Requirements

- *For a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit and (3) that the Court actually decided the question.*

Source: [Iftikhar Ahmed v. Syed Meharban Ali \[1974 SC\]](#)

### Question:

- **Whether res judicata can bind co-plaintiffs?**

### Ans:

- Yes.

### Requirements

- A previous decision should operate as res judicata between co-plaintiffs if all the above conditions are mutatis mutandis satisfied.

Source: [Chandu Lal v. Khalilur Rahman \[1950 PC\]](#)

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## EXPLANATIONS TO SECTION 11

### Explanation I

- " 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 III

- In the former suit:
- the **matter** must 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***
  - ground of defence or attack in such former suit
- shall be deemed
  - to have been a matter directly and substantially in issue in such suit

### **NOTE:**

- This Explanation embodies the principle of **constructive res judicata**

### Explanation V

- Any relief claimed in the plaint
  - which is not expressly granted by the decree
  - shall 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 be deemed to claim under the persons so litigating

**NOTE on Explanation VI:**

Privy Council in [Kumaravelu Chettiar v. T P Ramaswami Ayyar](#):

- Explanation 6 extends to include any litigation in which parties are entitled to represent interested persons other than themselves.

Supreme Court in [Narayana Prabhu Venketeswara Prabhu v. Narayana Prabhu Krishna Prabhu \[1977 SC\]](#):

- In a partition suit each party claiming that the property is joint asserts a right and litigates under a title which is common to others who make identical claims.
- If that issue is litigated in a suit and decided, the others making the same claim shall be held to be claiming a right “in common for themselves and others”.
- Each of them can be deemed, by reason of Explanation VI, to represent all those the nature of whose claims and interests are common or identical.

**Illustration:**

- Three persons claim a property to be joint whereas the 4<sup>th</sup> person claims it to be his separate property.
- A suit by anyone of the three against the 4<sup>th</sup> is decided by a competent court.
- The second and the third are deemed to have litigated under the first person.
- A subsequent suit filed by them shall not be tried by a court. The earlier decision shall operate as res judicata.

**Explanation VII**

- Provisions of this section shall apply
  - to a proceeding for execution of a decree



- 'Suit' shall refer to a proceeding for execution of decree
- 'issue' shall refer to question arising in such proceeding and
- 'former suit' shall refer to a former proceeding for 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

## NOTE on Explanation VIII:

### Effect:

- In a suit for partition, the value of the subject matter of the former suit was Rs. 50 lakhs and the **former court** was the District Court and
- the value of the subject matter of the **subsequent suit** is Rs. 5 crores and the subsequent court is the High Court because the value of the subject matter of the **subsequent suit exceeds the** pecuniary limit of the District Court
- In this case, the former court [the District Court] is not competent to try the subsequent suit because of its pecuniary limit
- Yet, on account of Explanation VIII, **section 11 becomes applicable**

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## Expansion of the scope of section 11

- Scope of section 11 has been considerably expanded by the Explanations
- Scope of section 11 has been considerably expanded by the judicial interpretations

## TEST FOR DECISION:

- One of the tests in deciding whether the doctrine of res judicata applies to a particular case or not is to determine whether two inconsistent decrees will come into existence if it is not applied.

Authority: [Venketeswara Prabhu v. Krishna Prabhu \[1977 SC\]](#)

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