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Critical Analysis of Section 11 of CPC, 1908 – Res Judicata

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ABSTRACT

One of the most significant provisions of a quite large Code of Civil Procedure 1908. We understand this from “Res” meaning subject-matter/dispute and “Judicata” meaning adjudging. The Indian Legal System adopted this doctrine by the way of Section 11 of Code of Civil Procedure, 1908. Section 11 empowers Courts to dismiss suits by a decree of Res Judicata if the issues between the same parties have been adjudged by a competent court under the same factual circumstances. This article delves into the critical analysis of interpretation of the essentials of Section 11, extension of the doctrine in the form of “Constructive Res Judicata” and Relation between Law of Estoppel & Issue Estoppel and Res Judicata. The process of developing conceptual understanding of Section 11 entailed collection and analysis of non-numerical concepts, opinion pieces, commentaries, and papers. Secondary sources like bare acts, books, journal articles, research papers, commentaries and news articles were used. Section 11 of CPC has positioned itself to champion public policy considerations, through cutting the multiplicity of litigations, scope of vexatious litigations, etc.

Keywords: *Res Judicata, Previous Suit, Fresh suit, Issue Estoppel, Finality, Section 11 and Public Interest.*

I. ANALYSIS

Section 11 of CPC, 1908: *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 previous suit between the same parties, or under whom they claim, under the same title, in a competent court, and has been finally decided by the Court.*

1. Res judicata finds its roots in bringing finality or closure to a judgment. When a former suit before a competent court decides on fact, law, or both, then either party is not permitted to file a fresh suit subsequently². I concur that in the light of public good³, without this doctrine, our

¹ Author is a student at Symbiosis Law School, Pune, India.

² *Satyadhan Ghosal v. Deorjin Debi*, AIR 1960 SC 941.

³ *Interest Reipublicae Ut Sit Finis Litium*; In Public Interest to put an end to Litigation.

Courts will become places of vindictive litigations, revenge suits for petty disputes, multiplicity of suits, etc⁴. By barring such suits, the opposite party is protected from being a victim of continuous harassment⁵. I opine that it entails *Claim Preclusion*, by barring suit on finally decided cause of action, and *Issue Preclusion*, by preventing raising judicially determined issues again⁶. Hence, I feel that the two causes or reasons which equip *Res Judicata*⁷, with a binding-effect through Section 11 are: (i) **Public Policy** and (ii) **Necessity**.⁸

2. For any subsequent suit to be barred by *Res Judicata*, there are a set of essentials which must be satisfied. **Firstly**, the matter must be in issue *directly* and *substantially*. The term “*Matter in Issue*” means the factual circumstances based on which both parties claim rights and the relevant laws pertaining to that issue⁹. The issue in Section 11 is to be of fact, law, or both. From my understanding, matter directly in issue means that the existence of the factual circumstances is not contingent upon the court’s judgment¹⁰. From substantially in issue, I understand the issue to have a material or significant bearing on the court’s decision¹¹. For *Res Judicata*, this phrase means that the matter is directly and substantially in issue, if it must be determined to decide the main issue and the judgment relies on that decision of the matter¹². However, both are dependent on case-to-case basis, I do not think there can be a fixed judicial standard to decide if the matter is in issue directly and substantially or not.

3. The differences in the bar imposed by Section 11 on three types of issues were settled in *Mathura Prasad v. Dossibai N.B. Jeejeebhoy*.¹³ In this case, Supreme Court held that a judgment of a competent court on a legal point also is entitled to the bar of Section 11. However, if the question is purely of law and immaterial to the facts, then it shouldn’t¹⁴. *Res Judicata* is inapplicable even in cases of an amendment to the law, questions of law dealing with the court’s jurisdiction or sanction of an illegal act¹⁵. Another exception I feel is the change in factual circumstances around the issue, if the situation changes, then a fresh petition can be filed¹⁶. I believe these exceptions to Section 11 for questions of law should be given, otherwise

⁴ *Narayan Prabhu Venkateswara v. Narayana Prabhu Krishna*, (1977) 2 SCC 181.

⁵ *Nemo Debet Bis Vexari Pro Una Et Eadem Causa*; No man shall be Vexed for the same cause Twice.

⁶ 8, C.K. Takwani, *Civil Procedure with Limitation Act 1963*, (2018).

⁷ *Res Judicata Pro Veritate Accipitur*, A thing adjudicated is received as the Truth.

⁸ *Duchess of Kingston Case*, (1776) 2 S.m. L.C. (6th Ed.) 679.

⁹ *Mathura Prasad v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613.

¹⁰ *Amalgamated Coalfields Ltd. v. Janapada Sabha*, AIR 1964 SC 1013.

¹¹ *Pandurang Ramchandra v. Shantibai Ramchandra*, (1989) Supp (2) SCC 627.

¹² *Isher Singh v. Sarwan Singh*, AIR 1965 SC 948.

¹³ *Mathura Prasad v. Dossibhai N.B. Jeejeebhoy*, (1970) 1 SCC 613.

¹⁴ 8, C.K. Takwani, *Civil Procedure with Limitation Act 1963*, (2018).

¹⁵ Kevin M. Clermont, *Res Judicata as Requisite for Justice*, 68 Rutgers University Law Review (2016). http://www.rutgerslawreview.com/wp-content/uploads/2017/01/03_Clermont-4.pdf

¹⁶ *Krishna Kumar & Radha Rai v. Vimala Sehgal*, ILR 1976 Delhi 238.

it will be open for misuse, as it will prevent fresh suits against *per incuriam*¹⁷ or erroneous judgments. Barring challenge of judgment's validity under Section 11, will wrongly place *procedural law over law of the land*.

4. Secondly, the parties in the former and fresh suit must be the same for *Res Judicata* to apply. The judgment, for it to be binding, needs to have same parties, at the time of the court's decision¹⁸. I concur with this because in such civil suits, rights are claimed based on facts. As per the standard law principles, if the litigating parties per se are different, then how ill the decree or order be binding? With different parties, the rights claimed will be different, furthermore, the capacity of the party in the suit per se will change. **Thirdly**, both parties need to have litigated under the same title in both former and fresh suits. Here, the "Title" means the capacity or interest in which he sued must be the same for the subsequent litigation as well¹⁹. The capacity here, in my opinion, is id the person is suing or getting sued for his own interest or for someone else's behalf. If the litigating party is a different person, then *Res Judicata* would not apply²⁰. Thus, I feel the determination used for this test is the sameness in the capacity of the litigating parties and not the cause of action of the former and fresh suit²¹. **Fourthly**, the same court needs to have competence to try the former as well as fresh suit²². I understand from *Explanation II*, bar under Section 11 depends on if the same issues, under same facts, were finally heard and decided, on merits. I believe if the suit was dismissed on lack of jurisdiction, maintainability, non-joinder, or misjoinder of parties, then *Res Judicata* will not apply. The Courts must be of exclusive, limited, or concurrent jurisdiction, and the same court shall have competence to try both suits²³. From *Explanation VIII*, in my opinion, the issue of competence can become difficult to determine, when legal amendments are made to the law. This can be approached by fixing the time of reference for jurisdiction on the date of filing of previous suit and not the fresh suit²⁴.

5. Explanation VI puts forth a comprehensive and holistic bar on multiplicity of proceedings caused by representative suits. I understand that when a suit is filed under Section 92 of CPC, if the person litigates *bona fide*, for the interests of all plaintiffs, then all of them are

¹⁷ *Avtar Singh v. Jagjit Singh*, (1979) 4 SCC 83.

¹⁸ Mukund Sarda, *Doctrine of Res Judicata and Maintainability of Suits – A Study* (April 2, 2016). Available at SSRN: <https://ssrn.com/abstract=2758056>

¹⁹ *Mahadevappa Somappa v. Dharamappa Sanna*, AIR 1942 Bom 322.

²⁰ 5 George Spencer Bower, *Doctrine of Res Judicata* (2019).

²¹ *Ram Govinda v. Bhaktabala*, 1971 AIR 664.

²² *Raj Lakshmi v. Banamali Sen*, AIR 1953 SC 33.

²³ *54th Law Commission Report of India*, pg. 21 (1973), <https://lawcommissionofindia.nic.in/51-100/Report54.pdf>

²⁴ Brajesh Ranjan, *A Restatement of the Law of Res Judicata in India* (July 10, 2016). Available at SSRN: <https://ssrn.com/abstract=2810683>

constructively barred from filing subsequent suits where matter is directly and substantially in issue with the previous suit²⁵. This is because a bar on the matter finally decided will apply to all the plaintiffs. For the bar to apply on representative suits, the plaintiffs must collectively claim the right in all their interest²⁶. Thus, I believe Section 11 will only apply when the litigation was *bona fide* and *representative* of all the plaintiffs involved.

6. A matter constructively is in issue, when it *might* and *ought* to have been made a ground of attack or defence in the previous suit.²⁷ From *Explanation IV*, I understand the object of this principle to be to preclude parties from not disclosing all grounds of arguments in the former suit and contesting them in the fresh suit. I understand from “*Might*”, it means that the person had prior knowledge of the ground during the former suit, and from “*Ought*” that the party must have taken the respective ground²⁸. Again, there is no fixed judicial rule, however, I think that if the concerned ground was made in the previous litigation and the decree passed therein, would be affected, then the question of *might* and *ought* of taking the ground would be satisfied. This principle, functions like “*Artificial form of Res Judicata*”, by preventing parties from taking a plea in the fresh suit, which they could have taken in the former suit. In *Devilal Modi v. STO*²⁹, a challenge to an order was made under Article 226. An appeal against the order was rejected by SC, the same person filed writ petition in High Court, the second appeal was rejected by the SC as barred by *Res Judicata*. Justice Gajendragadkar said, “*If Res Judicata is not applied, then petitions can be filed by adding few new points, which is contrary to public policy considerations and Doctrine of Finality of Judgments.*” This further consolidates *Res Judicata*, as all and probable cause of actions are barred from fresh filing and bringing closure to multiple line of suits.

7. We also see strong shades of similarity between *Res Judicata* and *Issue Estoppel*. The applicability of Section 11 of CPC is to civil suits, arbitration proceedings, tax proceedings, criminal proceedings, etc.³⁰ Just how *Res Judicata* bars reopening of suits finally decided by competent courts, Section 300(1) of CrPC 1973, states that any person tried by a competent court and convicted or acquitted, cannot be tried again till the conviction or acquittal exists³¹. This provision operates based on *Autrefois Acquit* (Previously Acquitted) or *Autrefois Convict*

²⁵ *Ahmad Adam Sait v. M.E. Makhri*, AIR 1964 SC 107.

²⁶ *Sadagopa Chariar v. Krishnamoorthy Rao*, ILR (1907) 30 Mad 185.

²⁷ *Nirmal Enem v. Jahan Ara*, (1973) 2 SCC 189.

²⁸ *Govt. of Province of Bombay v. Pestonji Ardeshir Wadia*, AIR 1949 PC 143.

²⁹ *Devilal Modi v. STO*, AIR 1965 SC 1150.

³⁰ 8, C.K. Takwani, *Civil Procedure with Limitation Act 1963*, (2018).

³¹ *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787.

(Previously Convicted)³². Thus, I also conclude that it's unlawful to try someone in the later stage of the same proceeding or through any subsequent litigation. However, the same cannot be observed for *Res Judicata* and Law of *Estoppel*. I believe, under *Section 115 of the Indian Evidence Act 1972*, the latter functions like an equitable relief, wherein no declaration or admission made by the respective person can be denied during the proceedings. It differs with Section 11 in a way that *Estoppel* binds only the promisor, whereas *Res Judicata* binds both parties³³. *Law of Estoppel* bars retraction or denial of statements, whereas *Res Judicata* bars subsequent litigations into already decided matters³⁴. Thus, the latter arises from court judgments but former arises from actions of parties³⁵.

II. CONCLUSION & RECOMMENDATIONS

1. However, there are certain technical concepts which aid the operations of Section 11. *Constructive Res Judicata*, as a technical concept, I believe should be applied to appeals as well. By being all-inclusive of claims, it circumvents multiple litigations based on related issues, when a judgment having finality-effect already exists³⁶.
2. The bar under Section 11 is mandatory if the plea satisfies all conditions³⁷. Since, the responsibility is on defendant to raise procedural objection of the same, it will be waived if it's not raised³⁸. I suggest that the plea to *res judicata* should be inserted as a mandatory procedure, by which it will never be waived and become compulsory.
3. In conclusion, *Res Judicata* is based on the larger aim of public policy by reducing scope of abuse, in the form of multiple, vexatious litigations, etc. However, given the wide ambit to bar, it shouldn't cause injuries to the litigating parties³⁹. This doctrine shall not apply to orders, where it is violative of fundamental rights.

³² *Pritam Singh v. State of Punjab*, AIR 1956 SC 415.

³³ Yogesh Sharma, *Res Judicata Under Code of Civil Procedure 1908*, iPleaders Blog, (Dec. 28, 2018), <https://blog.ipleaders.in/res-judicata-under-civil-procedure-code-1908/>

³⁴ Aditi Prabhune, *Res Judicata – Section 11 of CPC, 1908*, Legal Service India, (March 18, 2018), <https://www.legalserviceindia.com/legal/article-2646-res-judicata-section-11-of-civil-procedure-code-1908.html>

³⁵ Shvneek Hayer, *Res Judicata – Section 11 of CPC*, Law Times Journal, <https://lawtimesjournal.in/res-judicata-section-11-cpc/>

³⁶ 8, C.K. Takwani, *Civil Procedure with Limitation Act 1963*, (2018).

³⁷ *Talluri Venkata Seshayya v. Thadikonda Kotiswara Rao*, AIR 1937 PC I.

³⁸ *P.C. Ray & Co. Pvt. Ltd. v. Union of India*, (2018) 5 CLJ 141.

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