

**WORK SHOP NOTES
ON
FOCUS ON CIVIL PROCEDURE CODE**

**CH. Vivek Anand Srinivas
Addl. Senior Civil Judge
SRIKAKULAM.**

Suits - Institutions, Place of Institution and Parties to the Suit

Suits - Institutions: The word “suit” is not defined in the Civil Procedure Code. It is understood as a proceeding that commences in a Civil Court upon the presentation of a plaint. As we know a plaint is a statement in writing of a cause of action in which the relief claimed is set out in detail. Sec.26 CPC provides that every suit shall be instituted by the presentation of a plaint. The procedure for institution of suits is envisaged in Rule 20 of A.P. Civil Rules of Practice which provides that all plaints, written statements, applications and other proceedings may be presented to the Chief Ministerial Officer of the Court before 4.00 p.m. In case if the limitation expires on the same day, the Judge may receive them even after 4.00 P.M. Rule 20 (2) provides that the Officer shall at once endorse on the documents so presented. The Rule also casts an obligation on the party to file sufficient number of copies of plaint or proceeding and the documents. Rule 24 envisages that the Court shall not entertain any proceeding sent by post. When the plaint is found to be in order, it shall be registered. Further the plaint shall be entered in what we popularly call as 17 Register. At the time of registering the office will check for pending Caveats if any and make a note of it, if any immediate relief is sought dispensing with prior notice to other side.

When a suit is said to be registered

Generally while registering a suit, the Court shall not take too many untenable objections. All the objections shall be raised at a time and not on subsequent representations. The plaint shall be registered if the court fee paid is correct and the suit

is filed in the court having pecuniary and territorial jurisdiction and if it is filed within the period of limitation for claiming the relief in the suit and also whether there is cause of action for filing the suit. Suitable instructions are available in A.P. Civil Rules of Practice in this regard for guidance. There are some divergent views on the subject. According to some precedents, a suit is said to be instituted when the plaint is presented. Another view is that mere presentation is not the test and that a suit is deemed to be instituted only when it is registered as per the orders of the Court. The Court has to further see the status of a Defendant such as a minor, company, Government. In each case the Court has to follow the prescribed procedure.

Place of Institutions

The competency of a Court to entertain a proceeding can be termed as jurisdiction. In general there are three categories of jurisdiction viz., statutory or subject matter; pecuniary and territorial. Section 15 of Civil Procedure Code provides that every suit shall be instituted in the Court of the lowest grade competent to try it. On the filing of the suit, it is the duty of the Court to ascertain whether it has jurisdiction to entertain it. Particularly the Court should bestow its attention when subject matter jurisdiction is involved. Sometimes the Court will not be aware of lack of jurisdiction till the opposite party enters appearance and raises the plea that the Court has no jurisdiction. In such cases, the Defendant can file a petition to reject the plaint under Order VII Rule 11 CPC and by allowing the petition, the Court can rectify the irregularity in entertaining the suit.

There may be occasions where jurisdiction changes during the course of the legal proceedings. For example, if a plaint is amended by adding a new relief and requisite court fee is paid, then, the pecuniary jurisdiction changes. Then the plaint has to be

returned for presentation before the competent court having jurisdiction.

Parties to the suit :

The basic requirements for a suit are:

- (i) parties
- (ii) cause of action
- (iii) subject-matter
- (iv) reliefs claimed (prayer)

Availability of proper and necessary parties to the suit is essential to adjudicate a dispute. Order I of Civil Procedure Code gives various dimensions of joining parties to the suit in the capacity of either plaintiffs or defendants. Now, it is to be seen who are Necessary & proper parties?

In Razia Begum Vs. Anwar Begum (AIR 1958 SC 886) Hon'ble Supreme Court held that "*Rule 10(2) gives a wide discretion to the court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. A NECESSARY PARTY IS ONE WITHOUT WHOM NO ORDER CAN BE MADE EFFECTIVELY. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.*" The addition of parties is a question of judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

Order I Rule 1 deals with joinder of Plaintiffs whereas Order I Rule 3 deals with joinder of Defendants. Further we have to look into Order 2 Rule 3 which deals with joinder of causes of action.

Order 1 Rule 1 reads as follows: All persons may be joined in one suit as Plaintiffs where -

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative;

(b) if such persons brought separate suits, any common question of law or fact would arise.

Order 1 Rule 3 reads as follows: All persons may be joined in one suit as Defendants where -

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative;

(b) if such persons brought separate suits, any common question of law or fact would arise.

How cause of action arises :

An suit gives raise to either one cause of action or many causes of action. It is a bundle of facts. Thus it is cause of suit. In **Pittapur Raja Vs. Suriya Rau** the Privy Council held that the term meant “the cause of action for which the suit was brought”. Generally it means “every fact which is necessary to establish to support a right or obtain a judgment. It means every fact which will be necessary for the Plaintiff to prove (if traversed). Whenever a new party is added the Petitioner has to seek consequential amendment provided under Rule 28 Civil Rules of Practice. Sometimes parties need to be transposed. . It is said in execution proceedings there can be no adding of parties . These are some instances of parties to the suit.

RES JUDICATA and RES SUB JUDICE.

The first provisions related to avoiding multiplicity of suit starts with the provision of the concept of Res Sub Judice as provided under,

Section 10: Stay of Suit

"No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court".

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

As the heading of the section says 'stay of suit', means no court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue with the previously instituted suit between the same parties and the court before which the previously instituted suit is pending is competent to grant the relief sought.

The purpose of the section is to bring finality in the judgment and to avoid the contradictory decision by the two different courts, as there is a very good possibility that in case when matter is simultaneously being decided by different courts of concurrent jurisdiction, the courts may come up with different decisions and then it

will be very difficult to finalize which decisions to be abided by.

In simple word, the very authority of law will come at stake, there will be no finality of judgment. So, with the objective to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, the same subject-matter and the same relief, this section is provided in the Code. However, this rule only applies to trial of a suit and not the institution thereof. Although, it does not preclude a court from passing interim orders, but it applies to appeals and revisions.

The policy of law is to confine a plaintiff to one litigation so as to protect a person from multiplicity of proceedings and also to avoid a conflict of decisions by courts in respect of same relief.

However, this section can only be applied if the following condition are satisfied. These are:

- # Two suits – Previously Instituted and Subsequently Instituted
- # Matter in issue in subsequent suit – directly and substantially in issue in previous suit.
- # Both suits between same parties or their representatives.
- # Previous suit must be pending in same or in any other court in India
- # The court dealing with previously instituted suit competent to grant relief claimed in subsequent suit.
- # Parties litigating under the same titles in both the suit.

The word ‘shall’ in the section makes it mandatory and the moment court finds that the above conditions are satisfied, the court will not proceed with the subsequently instituted suit, that is, the court will stay with the proceeding of subsequent suit.

The court have inherent power under section 151 of the Code and using it, the court may stay or consolidate the proceedings, but it is not mandatory and it depends upon the discretion of the court, whereas if the condition so mentioned is satisfied under section 10, the court has to mandatorily stay the subsequent suit.

It is further important to remember that a decree passed in contravention of section 10 is not a nullity, and therefore, cannot be disregarded in execution proceedings. Again, as stated above, it is only the trial and not the institution of the subsequent suit which is barred under this section. Thus, it lays down a rule of procedure, pure and simple, which can be waived by a party. Hence, if the parties waive their right and expressly ask the court to proceed with the subsequent suit, they cannot afterwards challenge the validity of the subsequent proceedings.

Res Judicata and Constructive Res Judicata

Section 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 such issue has been subsequently raised, and has been heard and finally decided by such Court".

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 purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a 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 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.

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

Explanation VI- Where persons litigate bona fide in respect of 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 provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings 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 issue, shall operate as *res judicata* in as 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.

Section 11 embodies the rule of conclusiveness of the judgment. It enacts that once a matter is finally decided by the competent court, no party can be permitted to reopen it in subsequent litigation. To bring an end to litigation and to save the parties from constant troubles, harassment and expenses this rule was made in the Code.

To bring the finality of the judgment, such rule is required and this rule is not an exception in Indian law. Almost every civilized legal system have this rule by one name or another, such as, under Roman Law, it is in the name of 'ex captio res judicata', that is one suit and one decision is enough for any single dispute. The doctrine of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on justice, equity and good conscience which require that a party who has once succeeded on an issue should not be harassed by multiplicity of proceedings involving the same issue.

The doctrine of *res judicata* is based on three maxims:

- a) *Nemo debet lis vexari pro eadem causa* (no man should be vexed twice for the same cause)
- b) *Interest republicae ut sit finis litium* (it is in the interest of the state that there should be an end to a litigation); and
- c) *Re judicata pro veritate occipitur* (a judicial decision must be accepted as correct)

It is not every matter decided in the former suit will operate as res judicata in a subsequent suit. To constitute a matter as res judicata following conditions must be satisfied;

1. The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually (Explanation III) or constructively (Explanation IV) in the former suit (Explanation I). (Explanation VII is to be read with this condition)
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim. (Read with Explanation VI)
3. Such parties must have been litigating under same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised. (Read with Explanation II & VIII)
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit. (Read with Explanation V)

Constructive Res Judicata

Rule of constructive res judicata is engrafted under Explanation IV of Section 11 of the Code. It is artificial form of res judicata and provides that if a plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceeding with reference to the same subject-matter. That clearly is opposed to considerations of public policy on which the doctrine of res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by the courts would also be materially affected. Thus, it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this rule is called constructive res judicata, which, in reality, is an aspect or amplification

of the general principle of res judicata. **State of U.P. V. Nawab Hussain**, AIR 1977 SC 1680 . A, a sub-inspector of police was dismissed from service by D.I.G. He challenged the order of dismissal by filing a writ petition in the high court on the ground that he was not afforded a reasonable opportunity of being heard before the passing of the order. The contention was, however, negatived and the petition was dismissed. He then filed a suit and raised an additional ground that since he was appointed by the I.G.P., the D.I.G. had no power to dismiss him. The state contended that the suit was barred by constructive res judicata. The trial court, appellate court and the high court held that suit was not barred, but the Supreme Court held that the suit was barred by constructive res judicata as the plea was within the knowledge of the plaintiff and could well have been taken in the earlier writ petition.

Writ Petitions and Res Judicata

In **M.S.M sharma V. Dr. Shree Krishna**, AIR 1960 SC 1186, for the first time Supreme Court held that the general principle of res judicata applies even to writ petition filed under Article 32 of the Constitution of India. Thus, once the petition filed under Article 32 is dismissed by the court, subsequent petition is barred.

Similarly a writ petition filed by a party under Article 226 is considered on merit as a contested matter and is dismissed, the decision thus pronounced would continue to bind unless it is otherwise modified or reversed in appeal or in other appropriate proceedings permissible under the Constitution.

In the leading case of **Daryao V. State of U.P.**, AIR 1961 SC 1457, the Supreme Court has placed the doctrine of res Judicata on a higher footing, considering and treating the binding character of the judgments pronounced by competent courts as an essential part of the rule of law. It should be noted that the principle of res judicata and constructive res judicata are held not applicable in Habeas Corpus Petition by Supreme Court in **Ghulam Sarwar V. Union of India**, AIR 1967 SC 1335 and in **Lallubhai V. Union of India**, AIR 1981 SC 728, respectively.

ON PLEADINGS PLAINTS AND WRITTEN STATEMENTS

Pleading - Pleading means, the formal statement of cause of action or defence. Civil Procedure Code defined pleading as 'pleading means plaint and written statement' as per Order VI Rule 1.

Object of Pleading.

The Object of pleading is as under:

- i. To give information to both sides as to the case. Both parties are entitled to know case against them.
- ii. To bring parties to definite issues.
- iii. To avoid unnecessary pleadings and thereby reduce time of litigation and expenses.

Rules of pleading

1. Pleading to state material facts and not evidence. Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved as per O.VI R.2 CPC.
2. Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph as per O.VI R.2 CPC.
3. Dates, sums and numbers shall be expressed in a pleading in figures as well as in words as per O.VI, R.2 CPC.
4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading as per O.VI, R.4 CPC.

5. If there is any condition precedent which plaintiff or defendant wants to be contested must be distinctly specified in the pleading as per O. VI, R. 6 CPC.
6. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be considered only as a denial in fact of the contract and not the denial of the legality or sufficiency in law of such contract as per O.VI R.8 CPC.
7. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof as per O.VI R.9 CPC.
8. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred as per O. VI R.10 CPC.
9. Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letter, conversations or circumstances. There is no need to state details as per O.VI R. 12 CPC.
10. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied as per O.VI R. 13 CPC.
11. Every pleading shall be signed by the party and his pleader. Pleading may be signed by person duly authorised by party to suit as per O.VI, R. 14 CPC.

12. Every pleading shall be verified at the foot by the party. It shall state the date on which and the place at which it was signed as per O.VI R.15 CPC.

Striking out pleading - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading:

- a. Which may be unnecessary, scandalous, frivolous or vexatious, or
- b. Which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- c. Which is otherwise an abuse of the process of the Court as per O.VI R. 16 CPC.

Amendment of pleading - The Court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The Court may allow amendment in the pleading when:

- i. It is necessary for determination of real question in controversy.
- ii. It is just and proper,
- iii. It is necessary in the interest of justice.

A suit is instituted by presentation of plaint before the Court. A 'plaint' is written application made by plaintiff against defendant seeking relief from the Court. A plaint is pleading and should conform to the rules of pleading. Along with plaint, plaintiff shall file documents on which he relies for the relief.

Particulars to be contained in plaint [Order VII, Rule 1]

- a. The name of the Court in which the suit is brought;
 - b. The name, description and place of residence of the plaintiff;
 - c. The name, description and place of residence of the defendant, so far as they can be ascertained;
 - d. Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
 - e. The facts constituting the cause of action and when it arose;
 - f. The facts showing that the Court has jurisdiction;
 - g. The relief which the plaintiff claims;
 - h. Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
 - i. A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits.[O.VII, R.1]
- In money suit state precise amount claimed as per O.VII, R.2 CPC.
 - In case of immovable property plaintiff shall contain a description of the property which shall be sufficient to identify it as per O.VII R.3CPC.
 - Every plaintiff shall state specifically the relief claimed. Relief may be claimed either simply or in the alternative as per O.VII R. 7 CPC.

Rejection of plaint

The Plaint is rejected as per Or. VII, R 11 CPC- Where it does not disclose a cause of action; Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; Where the suit appears from the statement in the plaint to be barred by any law; Where it is not filed in duplicate; Where the plaintiff fails to comply with provisions of Rule 9 (fails to provide copies of plaint).

Written statement - Pleading include written statement. Written statement is pleading on behalf of defendant wherein he gives his defence or reply to the allegation made by plaintiff. A written statement is pleading therefore should conform to rules of pleading. • Written Statement shall be presented within 30 (maximum 90) days from service of summons.

Contents of Written Statement

1. **New facts:** New facts must be specifically pleaded. The defendant must raise by his pleading all matters which
 - a. Show the suit not be maintainable, or
 - b. Show that the transaction is either void or voidable in point of law,
 - c. And all such grounds of defence as per Order VIII Rule 2 CPC

2. **Denial:** Denial to be specific. Defendant should not deny generally. But he must

deal each allegation of fact to which he does not admit the truth. If it is not so denied specifically, it shall be taken to be admitted as per Order VIII Rule 3, 5 CPC. Denial should not be evasive. It should answer the point of substance as per Order VIII Rule 4 CPC.

Set-off - Set-off is a reciprocal acquittal of debt. It can be availed in money suit. If plaintiff has filed money suit against defendant and defendant also has a specific claim for money against plaintiff; set-off can be demanded by defendant.

Conditions for set-off -

1. The suit must be for recovery of money, 2. The amount of set-off must be ascertained sum of money, 3. It must be legally recoverable from plaintiff, 4. It must not exceed pecuniary limits of the Court, 5. It must be recoverable by the defendant claiming set-off, (where there are more defendants) and against the plaintiff or all plaintiffs, 6. Both plaintiff and defendant fill the same character as they fill in the plaintiff's suit as per Order VIII Rule 6 CPC.

Effect of set-off - The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off. The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off as per Order VIII Rule 6 CPC.

Legal set off Equitable set off

1. It is for ascertained sum of money. 2. Cross demand may or may not arise out of same transaction. 3. Court is bound to entertain legal set-off. 4. Amount claimed as set-off must be legally recoverable and not barred by limitation. If it is for

unascertained sum of money. 2. Cross demand must arise out of same transaction. 3. Court is not bound to entertain equitable set-off. 4. Amount claimed as set-off may not be legally recoverable and may be event barred by limitation.

Counter claim - Where defendant has a claim against plaintiff for which he can institute separate suit against the plaintiff but he can plead counter claim in the written statement. A defendant in a suit may, in addition to his right of pleading a set-off set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. Whether such counter-claim is in the nature of a claim for damages or not as per Order VIII Rule 6A CPC.

Set-off - Counter claim

Counter Claim - 1. It is a cross action. 2. It is a weapon of offence.(Like a sword) 3. Where plaintiff's suit is stayed, discontinued or dismissed; counter claim proceeds. 4. This is not arising out of same transaction. 5. It can be availed in any type of suit. 6. Where amount claimed by defendant is higher than plaintiff; it is counter claim.

Set Off - 1. It is statutory defence. 2. It is a ground of defence. (Like a shield) 3. Where plaintiff's suit is stayed, discontinued or dismissed; set-off also extinguished. 4. This is arising out of same transaction. 5. It can be availed in money suit only. 6 . Amount claimed by the defendant is always less than amount claimed by plaintiff.
