

**RES JUDICATA AND RES SUB JUDICE, ON PLEADINGS, PLAINTS  
AND WRITTEN STATEMENTS**

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

1. *Nemo debet bis vexari pro una et eadem causa*
  - no person should be vexed twice for the same cause
2. *Interest reipublicae ut sit finis litium*
  - it is in the interest of the state that there should be an end to a litigation
3. *Res judicata pro veritate occipitur*
  - a judicial decision must be accepted as correct

*Res judicata* means matter once adjudicated, cannot be re-adjudicated. The doctrine of res judicata technically means that a matter is issue which has already been tried by competent court, then another trial between the same parties in respect of the same matter shall not be allowed. It is a very important doctrine in civil Justice system, it emphasis that a subject matter of the suit which has already been decided, is deemed to be decided forever, and cannot be reopened by the same parties.

**Section 11 of Civil Procedure Code - 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 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 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 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 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.

## **2. Purposes of Res sub-judice**

The section -10 intends to protect a person from multiplicity of proceedings and to avoid a conflict of decisions. It also protects the litigant people from unnecessary harassment. It also aims to avert (avoid) inconvenience to the parties and gives effect to the rule of res judicata.

**Section 10 of Civil Procedure Code deals with res sub judice - 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.

**Section 12 of C.P.C. deals with Bar to further suit.-** Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

*According to Order II Rule (2) Relinquishment of part of claim-* Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not after words sue in respect of the portion so omitted or relinquished.

According to Order IX Rule (9) where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

According to Section 144 (2) of C.P.C. No suit shall be institute for the purpose of obtaining any restitution or other relief which could be obtained by application under section 144(1).

As per the Judgment of the Hon'ble High Court of A.P. for the State of Telangana and A.P. in Senior Regional Manager, Food corporation of India, Hyderabad VS Y. Thirupalu and another which was reported in **2017(6) ALD 239 (DB) = 2017 (5) ALT 437** in which the Hon'ble High court held that in order to constitute *res judicata* the following, among other, conditions must be satisfied.

- a) There must be two suits - One former suit and the other subsequent suit;
- b) the matter, directly and substantially in issue, must be the same either actually or constructively in both suits
- c) 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
- d) the parties to the suits, or the parties under whom they or any of them claim must be the same in both the suits; and
- e) the parties, in both the suits, must have litigated under the same title.

**As per Order XXII Rule 4 of C.P.C. Procedure in case of death of one of several defendants or of sole defendant:-** Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants along or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that

behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

**According to Order I Rule 10 (2) of C.P.C. Court may strike out or add parties:** The court may at any stage of the proceedings, either upon or without the application or either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Now the point for consideration is that whether the dismissal of the petition under Order XXII Rule 4 operates as resjudicata for the petition filed Under order I Rule 10 after the dismissal of the petition under Order XXII Rule 4 - The point was explained by the Hon'ble Supreme court in **Pankajbhai Rameshbhai Zalavadia Vs Jethabhai Kalabhai Zalavadia (Deceased) through L.Rs and others which was reported in AIR 2018 Supreme court 490** in which the Hon'ble Apex court held that " there is no bar for filing the application under Order I Rule 10, even when the application under Order XXII Rule 4 of the code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties Under Order I Rule 10 of the code read with Section 151 of the code".

As per the Judgment of the Hon'ble Supreme Court in Ramachandrasingh Vs Savithridevi which was reported in 2003 (8) Scale 505 " fraud and Justice never dwell together" where it is established that a Judgment is obtained by playing fraud on court, principles of resjudicata do not apply {2001(5) ALD 828 (DB)}.

Finding about Title given incidentally or collaterally in injunction - suit does not operate as resjudicata in title suit - 2002 (2) ALD 753.

Criminal courts finding would not operate as resjudicata in respect of civil courts proceedings - AIR 1971 SC 385 = AIR 1967 SC 1156 = AIR 1958 AP 371.

### **3. Res Judicata and Estoppel**

- Res-judicata based upon public policy that litigation should end.
- Estoppel is part of law of evidence where a man can't change his stand once taken.
- Res-judicata prevents someone from saying SAME thing in different litigations,
- Estoppel stops him from saying DIFFERENT things at different times, either in the same suit or different suits.
- Res-judicata bars the suit itself

- Estoppel only stops a certain piece of evidence from being taken on record, while the trial continues.
- Res-judicata ousts the Jurisdiction of the Court
- Estoppel stops the mouth of a party.
- Res-judicata derives from a Court Decision
- Estoppel from facts asserted by parties.

The relevant provision under the Indiana constitution is under Article 20(2) - “ No person shall be prosecuted and punished for the same offence more than once”. The relevant provision Under Evidence Act is Section 44. The relevant provision under Cr.Pc is Section 300.

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