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AN ANALYSIS OF THE PERCEPTION OF RES JUDICATA

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ABSTRACT

The concept of Res Judicata is an outcome of the English Common Law system. This principle of res judicata formed a component of the Code of Civil Procedure in the system of English Common Laws. Res in its literal sense means "subject matter" and the word Judicata means "adjudged", therefore the words, when clubbed together signifies "a matter which has been adjudged". In other words, Res judicata means a matter of dispute that has already been heard and adjudged by the Court. The principle of res judicata applies to a situation where a litigant attempts to file a subsequent lawsuit regarding the same matter about which he has already received a judgment in a previous case involving the same parties. The principle of res judicata intends to promote the fair administration of justice and equity and to prevent the law from abuse. The thrust of the doctrine is to prevent a party from re-litigating an issue or a defence which has already been determined (known as the cause of action estoppel or issue estoppel) or which could have previously been litigated[1].

This principle was borrowed by the Indian Legal System from the Common Law System. In earlier days res judicata was referred to as Purva Nyaya or former judgment by the Hindu lawyers and Muslim jurists in India. This principle plays a major role in the sphere of administrative law. This principle is very necessary for the proper functioning of the judiciary.

This article aims to study and analyse the Principle and application of Res Judicata and a detailed study of the same.

INTRODUCTION

"Res judicata pro veritae acciptur" is the original Latin maxim which over the years has popularly come to be known as "Res judicata". The doctrine of Res Judicata in its original sense aims to preserve the effect of the first judgement of a particular case. The doctrine prevails for courts throughout the world. India has adopted the principle of res judicata in Section 11 of the Code of

[1] *Henderson v Henderson* (18430 3 Hare 100)

Civil Procedure, 1908. In India, the doctrine of Res Judicata applies to a situation when there is two or more petition containing the same parties and facts filed in the same or other courts of India. In Indian law, the doctrine of Res Judicata has been stated in Section 11 of The Code of Civil Procedure, 1908 which states "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."

According to Explanation I of Section 11, 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. Therefore it may clearly be inferred that if a decision is given before the institution of a suit containing the same parties and facts and the judgement previous suit has been made final by operation of law, the proceedings of the fresh suit will be barred by the principle of Res Judicata. In the recent landmark judgement of ***Virgin Atlantic Airways Ltd v Zodiac Seats UK Limited***[2] *on Res Judicata Lord Sumption has defined the doctrine of res judicata as "…a portmanteau term which is used to describe a number of different legal principles with different juridical origins"*

The case laid down six important principles of the doctrine of Res Judicata viz.

1. A party is prevented from bringing subsequent proceedings to challenge an outcome that has already been decided.
2. If a claimant succeeds in the first act and does not appeal the outcome, he may not bring a subsequent action on the same cause of action
3. The doctrine of merger treats a cause of action as having been extinguished once judgment has been provided and accordingly the Claimant's only right is the judgment itself
4. A party may not bring subsequent proceedings which should and could have been dealt with in earlier proceedings
5. There is a general procedural rule against abusive proceedings.[3]

[2] *[2013] UKSC 46*
[3] *Virgin Atlantic Airways Ltd v Zodiac Seats UK Limited [2013] UKSC 46*

The doctrine had also been implemented in the leading judgement of ***Satyadhyan Ghosal And Others v Sm. Deorajin Debi And Another***[4] where the principle of Res Judicata had to be invoked in the different stages of proceedings of the case, in the same suit the nature of the proceedings, the extent 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[5].

In other words, it may be stated that the doctrine of res judicata aims to prevent a person to dispute on the same matter twice and it also aims to uphold the sanctity of a judicial decision.

THE AMBIT AND MANNERISM OF RES JUDICATA IN THE MODERN LEGAL SYSTEM

This doctrine is similar to the concept of double jeopardy, but it applies in suits relating to civil law. The doctrine comprises of two concepts viz. claim preclusion and issue preclusion. Claim preclusion prevents the litigation of a subject of a previous legal cause of action and at the party. Issue preclusion prevents a suit from being brought up again, the subject matter of which has already been decided by a Court of competent jurisdiction.

The Doctrine of Res Judicata aims to form a balance between the largely distinguished poles. On one hand, it functions to bring about an efficient judicial system that renders final judgments with certainty and uphold the equity of a defendant having to defend the same claim or issue of law

[4] 1960 SCR(3) 590
[5] Shashwat Agarwal, Res Judicata in India, CLI I

repeatedly. On the other hand, it functions to have the issues and claims of the plaintiff's interest, properly and fairly litigated.

The doctrine of res judicata owes its basis to three legal maims viz.

1. Nemo debet lis vaxari pro eadem causa which indicates that no man shall be vexed for the same reason twice,
2. Interest republicae ut sit finis litium which means that it is in the interest of the state there should be an end to litigation,
3. Re judicata pro veritate occipitur which means that a judicial decision must have abiding effect end, a must be accepted.

The doctrine of res judicata was inspired by the principles of justice, equity and good conscience. The purpose of this doctrine is to induce the finality of litigation. Therefore, the doctrine of res judicata is also termed as the "rule of conclusiveness of judgement". Moreover, this doctrine has come into existence from the overriding concept of judicial consistency and economy. It is not only in just the Code of Civil Procedure Code, 1908 but also the doctrine experiences its applicability in the sphere of administrative law.

In the judgement of ***Gulam Abbas & Ors vs State of U.P. & Ors***[6] it was said that the scope of the doctrine of res judicata is not exhaustive and it would apply to various cases as a general principle. Moreover, it may also be said that res judicata could also apply to different stages of the same suit based on the findings of issues in different suits.

In the landmark judgement of ***Satyadhyan Ghosal And Others v Sm. Deorajin Debi And Another***[7] it was said, "The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was

[6] 1981 AIR 2198
[7] Supra note 4

dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again."

THE IMPLEMENTATION OF THE DOCTRINE IN INDIAN LEGAL SYSTEM

The principle of res judicata rests on the time factor namely, which has been decided once shall not be reopened on a later date. If two matters a decided by one judgement both the matters are disposed of simultaneously in one go.

In order to apply the doctrine of Res Judicata certain grounds that are mentioned below have to be fulfilled according to S.11 of the Code of Civil Procedure,1908.

1. **There must be two suits**

There have to be two suits viz. one former suit that has previously been decided and the present suit in question. A former suit is a suit decided prior to the suit in question whether or not it was instituted subsequently.

In the case of ***Tulison Traders, Delhi And Anr. vs Gurdit Singh And Ors.***[8] it was said that "that there should have been a decision in the former suit to give rise to res judicata in a subsequent suit was satisfied".

2. **The matter should be directly and substantially in issue.**

The provision in S.11 of the Code of Civil Procedure,1908 uses the phrase "matter directly and substantially in issue". Thus, for res judicata to apply in the present suit, the matter raised in the former and the subsequent suit should be "directly and substantially in issue".

In the judgement of ***Prem Das Chela Bhola Dass v Joti Pershad***[9] it was said, "In considering the applicability of Section 11 of the Code of Civil Procedure, the Court in the subsequent suit has to

[8] AIR 1974 Del.190
[9] AIR 1971 Delhi 282

see the matter which was directly and substantially in issue between the parties and the earlier decision on that issue."

The phrase "directly and substantially" stands for the issues that had some importance and value. If the matter raised in the subsequent suit was not of any importance or value, the principle of res judicata would not apply.

The question of whether a matter in issue was directly and substantially decided in the former suit has to be decided on

a. The pleadings in the previous suit,
b. The issues raised therein, and
c. The decision in the suit.

3. The parties must be the same

It is very necessary that the parties in the second suit must be the same as those in the first, or have been represented by a party to the prior action for res judicata to apply. Res judicata applies in a subsequent suit, the same parties to the former suit, the legal representatives of such parties, or any one claiming under such parties.

In ***Daryo Singh v. State of U.P.***[10], the petitioner had filed a writ petition in the High Court of Allahabad under Article 226 which was dismissed. He further filed a writ petition in Supreme Court under Article 32 of the constitution for the same relief and on the same grounds. The Supreme Court dismissed the petition and upheld the contention of the High Court. Hence the principle will also apply to writ petitions.

Moreover, the cases must be filed in the same capacity. In various judgements it has been held that a suit filed by a man in a different capacity when compared to the former suit cannot be exposed to the doctrine of res judicata.

[10] 1961 AIR 1457

In the judgement of ***Pukhraj D. Jain v. G. Gopalakrishna***[11] it was said "If the court is satisfied that subsequent suit can be decided purely on a different legal point, it is open to the court to decide such suit."

4. The former suit must have been decided by a competent court

The court in which the former suit was instituted must have had jurisdiction to grant the relief claimed in the subsequent suit. If the matter was adjudged by a court which has no jurisdiction to hear and adjudge the matter, the doctrine of res judicata would not apply.

The section "does not affect the jurisdiction of the Court" but "operates as par to the trial" of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, then they are not competent i.e. they become barred to try the subsequent suit in which such issue has been raised[12].

In the judgement of ***Upendra Nath Bose v. Lall and Others***[13] Lord Russell of Killowen pointed out, "A Court which declines jurisdiction cannot bind the parties by its reasons for declining jurisdiction: such reasons are not decisions and are certainly not decisions by a Court of competent jurisdiction."

5. The matter should be heard and decided

For the doctrine of res judicata to apply it is also a necessity that the issues must have been finally heard and decided in the prior suit. It must be noted, that only if an opinion that is immaterial to the main decision is made in the former suit, the doctrine of res judicata cannot be applied to the subsequent suit. For res judicata to apply the matters which are directly and substantially in issue in the subsequent suit must have been heard by the Court in the former suit and a final decision on the same must have been delivered.

In following scenarios the former suit is deemed to be finally decided:

[11] (2004) 7 SCC 251
[12] Supra note 5
[13] (1941) 43 BOMLR 381

a. By ex parte
b. By dismissal
c. By decree on an award
d. By oath tender under section 8 on Indian Oath Act,1873
e. By dismissal owing to plaintiff failed to produce evidence at the hearing.

In Hope ***Plantations Ltd. v. Taluk Land Board, Peermade & Anr***[14] the court explained "One important consideration of public policy is that the decision pronounced by courts of competent jurisdiction should be final unless they are modified or reversed by the appellate authority and other principles that no one should be made to face the same kind of litigation twice ever because such a procedure should be contrary to consideration of fair play and justice. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demon stratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it."

LANDMARK JUDGEMENTS

In the leading case of ***Devilal Modi v Sales Tax Officer***[15] the validity of an order of assessment under Article 226 of The Constitution of India was challenged. The petition was dismissed based on its merit. The appeal of the same was dismissed by the Supreme Court of India. A writ petition was filed in a High Court against the same order which was dismissed and the Supreme Court of India held that petition to be barred by the principle of res judicata.

In another landmark judgement of ***Avtar Singh & Ors v Jagjit Singh & Anr***[16] it was said by UNTWALJA J. that "The Civil Court on the objection of Respondent No. 1 framed a preliminary issue whether the said Court was competent to try the suitor was it a matter which could be decided only by the Settlement Commissioner. By Order dated 7.7.1958 the learned Subordinate Judge

[14] (1999) 5 SCC 590
[15] 1965 AIR 1150
[16] 1979 AIR 1911

decided that the Civil Court had no jurisdiction to try this suit and directed the return of the plaint for presentation to the proper Revenue Court. When the appellants filed their claim in the Revenue Court their petition was returned holding that the Revenue Court had no jurisdiction to try it. Thereupon the appellants instituted suit No. 13 of 1960 in the Court of Sub Judge, First Class, Bassi on 2-4-1960. This suit has failed throughout on the ground of res judicata. The High Court has affirmed the dismissal on the view that the decision dated 7-7-1958 given by the Civil Court in Suit No. 41 of 1958 on the point of Civil Court's jurisdiction to try the suit will operate as res judicata. In our opinion the High Court is right."

In the judgement of ***Mathura Prasad Bajoo Jaiswal & Ors vs Dossibai N. B. Jeejeebhoy***[17] it was said that res judicata comprises of the parties to the previous case and cannot move again in collateral proceedings.

In ***Sheoparsan Singh v. Ramnandan Singh***[18] it was observed that "the rule of res judicata, while founded on ancient precedents, is dictated by a wisdom which is for all time…. Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law, sue again, he should be answered, ''you were defeated formerly". This is called the plea of former judgment.'... And so, the application of the rule by the courts in India should be influenced by no technical considerations of form, but by a matter of substance within the limits allowed by law."

The doctrine of res judicata was also applied in the judgement of ***The Midnapur Zamindary Company v Kumar Naresh Narayan Roy***[19].

In the judgement of ***N. Ecko Dry Cleaners v Ram Kishan Ahuja***[20] G.C. Gain held that "The learned counsel for the appellant has not brought to my notice any direct authority taking the view

[17] 1971 AIR 2355
[18] AIR 1916 PC 78
[19] (1924) 26 BOMLR 651
[20] 25 (1984) DLT 329

that an adverse finding against the successful party in these circumstances would operate as res judicata."

In ***Amalgamated Coalfields Ltd. & Anr. v. Janapada Sabha Chhindwara & Ors***.[21] the bench held "Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasize that the application of the doctrine of res judicata to the petitions filed under Art. 32 does not in any way impairs or affects the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law**.**"

RESTRICTIONS OF THE DOCTRINE OF RES JUDICATA

There are certain limited exceptions that allow a party to ambush the original judgement even outside appeals. Those are popularly called collateral attacks. They are customarily related to procedural or judicial issues.

Moreover, in cases that involve due process, cases that appear to be Res Judicata may be re-litigated, people who have had their liberty taken away (that is, imprisoned) may be allowed to be re-tried with a counsel as a matter of fairness.

In the ***Privy Council judgement of Jallur Venkata Seshayya v. Thadviconda Koteswara Rao***, a suit was filed in the Court for the purpose of declaring certain temples public temples and to abrogate the alienation of the endowed property by the manager thereof. A similar suit was dismissed by the Court two years back and the plaintiffs of this case 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 in the present scenario. But, the Privy Council said that finding 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.

[21] AIR 1964 SC 1013

There is no evidence in the suit establishing either want of bona fide of collusion on the part of plaintiffs as res judicata.

In another famous judgement of ***Beli Ram And Brothers v Chaudri Mohammad Afzal***[22] it was held that where a minor's suit was not brought by the guardian of the minor bona fide but was brought in collusion with the defendants and the suit was a fictitious suit, a decree obtained therein is one obtained by way of fraud and collusion within the meaning of Section 44 of the Indian Evidence Act, 1872, and Res Judicata does not apply.

In the judgement of ***Installment Supply Pvt. Ltd. And Ors. v The Union of India And Others***[23] it was decided that in cases of income tax the doctrine of res judicata does not apply.

Moreover, in another cases like ***P. Bandyopadhyay and 2 Ors vs Union of India and 3 Ors***[24] and ***Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh***[25] it was held that in cases of Public Interest Litigation and Special Leave Petition the doctrine of res judicata does not apply.

It must also be mentioned in this context that in the case of ***Sunil Dutt v Union of India And Ors***.[26] that the principle of res judicata does not apply in cases of Habeas Corpus Petitions.

CONCLUSION

In general, the Doctrine of Res Judicata is applicable to the Code of Civil Procedure. But, at times, the doctrine is implemented in various other statutes as well. In administrative law, the doctrine functions to administer on how well the Judiciary does its work, how efficiently the Judiciary disposes of the case and therefore the doctrine makes itself applicable where there's quite one petition filed within the same or within the other court of India. This doctrine is also applicable even outside the Code of Civil Procedure and covers a lot of areas which are connected to the

[22] (1948) 50 BOMLR 674
[23] 1962 AIR 53
[24] W.P. 2704.05.doc
[25] 1989 AIR 594
[26] AIR 1982 SC 53

society and people. The scope of this doctrine is widening day by day by virtue of various leading and celebrated judicial decisions.