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Q. Explain the rule of res-judicata. Differentiate between direct resjudicata in constructive resjudicata.

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Res-judicata

Section 11 of civil Procedure code embodies the doctrine of resjudicata or rule of Conclusivness of a judgment
It is based on - Ex captio res judicata
one suit and one descision.

Nature and scope - It is founded on the justice, equity and good conscience which require thata party who has once suceeded on an issue shall not be harrased by multiplicity of proceeding.

object - Nemo debt bis vexari pro una et eadem Causa
No man should be vexed twice for the same of cause.

- Interest reipublicae ut sit finis litium
It is the interest of State there shall be an end to a litigation.

- Res judicata pro veritae Occipitur.
A judicial descision must be accepted Correct

write in detail

Essentials.

1. Matter directly and substiantialy in issue (expl. IV, III)
2. former suit between same parties and representative (expl. VI)
3. Parties litigating under same title
4. Court of Competent jurisdiction (expl. II)
5. Heard & finally decided (expl. V, VIII)

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Exception - does not applies to summary proceedings (O32)
- No applies to writ of habeas corpus
- Withdrawal of such and compromise (O23)

Scan property not visible

[Constructive Res-judicata]

The rule of direct res-judicata is limited to a matter actually in issue alleged by one party and either denied / admitted by the other party expressly / impliedly.

But rule of constructive res-judicata (Explanation V) engrafted as an "artifical form of res-judicata" and provides that if plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to raise that plea later on.

State of U.P. v/s Nawab Hussain.

Plea which might and ought been made ground of defence in previously instituted cannot be made a ground in subsequent suit.

Eg:- A files a suit against B for declaration that he is entitled to certain lands as heir of C. The suit is dismissed. The subsequent suit claim the same property on the ground of adverse possession is barred by constructive res-judicata.

The expressions "might" → party affected had knowledge of the ground of attack / defence at the time of previous suit.

→ "Ought" → compels the party to take such plea.

Daryao v/s state of UP

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Q-2. Write a short note on :-

(a) Rejection of plaint.

2½

Order 7 Rule 11 of the code of civil procedure deal with rejection of plaint and lays down various grounds on which it can be rejected by the court.

Grounds

1. Non-disclosure of cause of action [Rule 11(a)]

If plaint does not disclose any cause of action, the court will reject.

Roop Lal V/S Nachhatter - part of a plaint cannot be rejected and if no cause of action disclosed the plaint should be rejected as a whole.

2. Relief claimed is Undervalued [Rule 11(b)]

where the relief claimed by the plaintiff is undervalued the plaint will be rejected.

3. Plaint is insufficiently Stamped. [Rule 11(c)]

Relief claimed by plaintiff is properly valued but written upon insufficiently stamped and plaintiff fails to pay the requisite court fees.

4. Barred by law [Rule 11(d)]

where suit appears from the statement in the plaint to be barred by Laws, court will reject it.

Eg:- Barred by limitation etc.

5. Plaint not in duplicate [Rule 11(e)]

O4 R1 indicate that for institution of a suit the

plaint is to be filed in duplicate.

6. Non-compliance of Rule 9 O7:
where the plaintiff fails to present copies of the plaint for each defendants and requisite fees for summons within 7 days, the plaint will be rejected.

O7 Rule 11 is not exhaustive, plaint can be rejected for any other ground.

Rejection of plaint is a 'decree' within the meaning of Section 2(2), then [appeal] can be made for rejection.

[Effect] - O7 Rule 13.
If plaint is rejected on any of the grounds as mentioned above then also he can present a fresh plaint in respect of same cause of Action.

(b) Temporary Injunction.
The term 'injunction' is not defined in the Code. According to [Halsbury] - Injunction is a judicial order when a party is restrained/abstained to do a particular act or not.

[Object] -> To maintain status quo.
-> To preserve the property till the conflicting claim of parties are settled.

[Types] of injunction
1. Prohibitory Injunction - prevent/prohibit the person from doing a particular act.

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2. Mandatory Injunction - Compel a person to do some positive act

Point of view of duration it is of two types.
(a) Permanent injunction (Sec. 38 of Specific Relief Act)
(b) Temporary injunction (O39 Rule 1 & 2).

Grounds for temporary injunction [Rule 1 & 2]

Rule 1(a) - where property in dispute is in danger of being wasted, damaged or alienated by either party to suit or wrongfully sold in the execution of a decree.

Rule 1(b) - where defendant threatens, intends to remove or dispose of the property with a view to defraud his creditors.

Rule 1(c) - where defendant threaten to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute

Rule 2 - where defendant is about to commit
> breach of contract or,
> injury of any kind.

Sec 151, 94(c) - on any other ground which Court deems fit.

Circumstances / Principles governing injunction.

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Grant of injunction is discretionary remedy. Court has wide discretion to grant or refuse to grant temporary injunction.

(i) Prima Facie Case.
- There is bona fide dispute raised by the applicant.
- There is arguable case.
- There is probability that on merits of the case, the applicant will be entitled to relief.

(ii) Irreparable injury
The applicant must further satisfy the Court that he will suffer irreparable injury if injunction is not granted.

(iii) Balance of Convenience.
Balance of Convenience to be made in favour of the applicant is to be considered. If Court thinks balance is in favour of applicant; injunction will be granted.

Consequence of disobedience or breach of injunction.
Section 94(c) and Rule 2-A of Order 39.
→ Court may Order arrest of opponent and detention in civil prison not exceed 3 months.
→ Attachment of property, shall remain in force for one year.
→ Court may Order both arrest and attachment.

Thus injunction is the discretionary power of court which must be exercised on sound legal principles.

3½ Q What is an interpleader suit? when and by whom can it be instituted?

Section 88 read with Order 35 provides for interpleader suits.

General Rule - in majority of cases, there is dispute between plaintiff and the defendant.

* write Rule 1-5 Order 35, in brief

An interpleader suit is, however, an exception to this rule where the real dispute is not between the plaintiff and the defendant but between the defendants who interplead against each other. 'To interplead' means to litigate and settle the point of controversy.

Sec 88 - provides that in interpleader suit, there is certain sum of money / debt / other property in dispute between the defendant only and it is the possession / custody of the plaintiff.

Rule 1 ⇓ Particulars of interpleader suit

The plaintiff claims no interest in it except for charges / costs and he is ready to deliver it to the rightful claimant.

Object - is to get the claims of rival defendant adjudicated.

Rule 2 - Payment into Court

Conditions - when?

There must be some debt, sum of money or other property movable / immovable.

Two / more persons must be claiming adversly to one another.

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Rule 3 → The person from whom such debt, money / property is claimed must not be claiming interest thereon other than the charges and costs and he must be ready and willing to pay / deliver it to rightful claimant.

Procedure where defendant actually sues plaintiff

- There must be no suit pending wherein the rights of rival claimant can be properly adjudicated.

Eg. – A is in possession of property claimed by B and C adversly. A does not claim any interest in the property and is ready to deliver it to the rightful claimant. A can institute an interpleader suit against B and C.

Rule-4 Procedure at first hearing

Appeal – The Order of dismissal of suit under Section 88 – is appealable.
Decision under Rule 3, 4 and 6 of Order 35 is appealable order. [O43 Rule 1(p)]

Rule 5 → Agents and tenants cannot institute interpleader suit.

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N Nishtha Singh

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