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Q-1 —. Explain the rule of res judicata. Differentiate between direct res judicata and constructive res judicata.

Answer — Introduction - Section 11 of the Code of Civil Procedure, 1908 incorporates the doctrine of res judicata. It is also called 'rule of conclusiveness'. It means that once the matter is finally decided by the court, no one can reopen it in a subsequent litigation. Under Roman Law, it is known as ex captio res judicata which signifies previous or former judgement.

Supreme Court in Satyadhyan Ghosal v. D. Debi, held that principle of res judicata is based on the need of giving finality to the judicial dicisions.

Section 11 of the Code provides that no court shall try any suit or issue in which matter directly and substantially in issue has been directly and substantially in issue in a former suit, between the same 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 matter in which has been subsequently raised, and has been heard and finally decided by such court.

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for example, A sues B for possession of certain properties on the basis of sale deed in his favour. B contends the deed as fictitious. The plea is upheld and the suit is dismissed. A subsequent suit for some other properties on the basis of same sale deed is barred as the issue about the fictitious nature of the sale deed was actually the issue directly or substantially in the former suit.

The doctrine of res judicata is based on the following maxims:

1. Interest reipublicae ut sit finis litium — It is in the interest of the State that there must be an end to the litigation.
2. Nemo debet bis vexari pro una et eadem causa — No men ought to be vexed twice for the same cause.
3. Res judicata pro veritate accipitur — A judicial decision must be accepted as correct.

In Daryao v. State of UP (1961) SC, the Supreme Court held that res judicata is an essential part of rule of law. The court further held that the doctrine of res judicata is equally applicable to the writs under Article 32 and 226 of Constitution of India. The basis of res judicata is public policy in the interest of public at large.

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Supreme Court in Isabella Johnson v. MA Susai case, held that doctrine of res-judicata is not applicable on pure question of law.

Constructive res-judicata:

Constructive res judicata is provided under Explanation IV to Section 11. It provides that a matter will be constructively in issue if it 'might and ought' to have been a ground of defence or attack in former suit.

Principle underlying constructive res judicata.

According to the doctrine of constructive res-judicata, where the parties have had an opportunity of raising a matter that should be taken to the same thing as if the matter had been actually raised and decided.

Thus, it helps in raising the bar of res-judicata by suitably construing the general principles of res-judicata.

for example: A sues B to recover damages for breach of contract and obtains a decree in his favour. B can not afterwards sue A for rescission of contract on the ground that agreement is not fully represented between the parties. Since that ground ought to have taken by him in previous suit as a ground of defence.

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In State of UP v. Nawab Hussain Case, the Supreme Court held that constructive res judicata is an aspect of general principles of res judicata.

In Devilal Modi v. STO Case, the Supreme Court held that if the doctrine of res judicata is not applied then doctrine of finality of judgement pronounced by courts would be materially affected.

In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged in earlier proceedings.

Q.2. — Write short notes on:
a). Rejection of plaint
b). Temporary injunction

Answer: (a) Rejection of plaint: (2)

The term 'plaint' has not been defined in the Code. However, it can be defined as a statement of claim by presentation of which the suit is instituted. It is pleading of the plaintiff. Order 7 lays down rules relating to plaint.

Rejection of plaint:

Rule 11 of Order 7 of the Code deals with rejection of plaint. It lays down various

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grounds on which it can be rejected by the court.

Grounds for rejection of plaint:

(i) Non disclosure of cause of action. [Rule 11(a)]
(ii) Relief claimed is under valued. [Rule 11(b)]
(iii) Plaint is insufficiently stamped. [Rule 11(c)]
(iv) Barred by law. [Rule 11(d)]
(v) Plaint not in duplicate [Rule 11(e)]
(vi) Non compliance of Rule 9 [Rule 11(f)]

In Roop Lal Sathi Case (1982), the Supreme Court held that a part of the plaint can not be rejected and if no cause of action is disclosed, the plaint should be rejected as a whole.

In a recent case (2016), the Supreme Court held that plaint an application under Order 7 Rule 11 can be filed at any stage of the suit.

In K. Akbar Ali v. K. Umar Khan (2021), the Supreme Court reiterated that the provisions of Order VII, Rule 11 are not exhaustive and the court has inherent power to see that frivolous and vexatious litigations are not allowed to consume the time of the Court.

A plaint can be rejected on other relevant grounds also.

(b). Temporary injunction:

Temporary or Interim injunction

write order 7 Rule 12 & Recording of Reasons

Order 7 Rule 13 does not bar institution of fresh Suit

decree under 2(2) CPC

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restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or further orders of the Court. It is contained in Order 39, Rule 1 to 5 of the Code.

Sec. 37 SRA ↓ define temporary injunction ↓ as are to continue until a Specified time or until further Order of Court regulated by CPC may be granted at any stage

Grounds of temporary injunction [Rule 1, 2]:

The plaintiff or the defendant as the case may be, may apply to the court for granting temporary injunction on following grounds as mentioned in Order 39, Rules 1 and 2:

1. Where in a suit, any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of decree [Rule 1(a)],
2. Where the defendant threatens or intends to remove the property with a view to defrauding his creditors [Rule 1(b)],
3. Where the defendant so cause any injury to the plaintiff in relation to any property in dispute [Rule 1(c)],
4. Where the defendant is about to commit a breach of contract or other injury of any kind [Rule 2].

Grant of injunction is discretionary remedy. The Court may grant or refuse to grant temporary injunction.

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Principles for granting injunction

- Prima facie case
- Irreparable loss or injury
- Balance of convenience

In Manohar Lal Chopra v Seth Hiralal (1962), the Supreme Court held that where the court is of opinion that the interest of justice so requires, it has inherent power to grant injunction under Section 151 of the Code, even on the grounds not mentioned in Order 39, Rules 1 and 2.

Section 94(c) and Order 39, Rule 2A provides for the consequences of disobedience or breach of an order of injunction.

1. order of arrest and detention in civil prison not exceeding 3 months;
2. attachment of property which remain in force not more than 1 year,
3. arrest and attachment both.

Ad-interim injunction or ex-parte interim injunction:

As a general rule Order 39, Rule 3 requires that the court shall, before granting the injunction, give notice to the opposite party. It also provides that the court may proceed without giving notice where it appears that the object of granting injunction would be defeated by delay.

The court shall record the reasons where the injunction is granted without giving notice to the opposite party. [Proviso to Rule 3].

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Rule 3A of Order 39 provides that injunction would be for a limited period and the application will be decided within 30 days

Shiv Kumar v. MCD Case, Supreme Court held that recording of reasons is not a mere formality.

Rule-4 Order for injunction may be discharged varied set aside

Q3. What is an interpleader suit? when and by whom can it be instituted? 3½2

Answer. Introduction — As a general rule in majority of the cases, there is a dispute between plaintiff and the defendant. However, an interpleader is 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.

Section 88 read with Order 35 provides for interpleader suit.

Section 88 provides that in interpleader suit, there is a certain sum of money or debt or other property whether movable or immovable in dispute between the defendants only and it is in possession or custody of the plaintiff. The plaintiff claims no interest in it except for charges or cost and willing to pay or deliver to the rightful claimant.

✗ two or more persons claim adversely ✓

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for example; A is in possession of property claimed by B and C adversely. A does not claim any interest in the property and is willing to deliver it to the rightful claimant. A can institute an interpleader suit against B and C.

Mention Rule 1-5 in brief

Order 35 lays down the procedure to be followed for interpleader suit.

Rule 1 — Particulars in interpleader suit

Who may institute an interpleader suit:

In National Insurance Co. Ltd. v. Dhirendra Nath Banerjee (1937), it was observed that a person who has no interest in any debt, sum of money or property in dispute except for the charges and costs and such person is willingly ready to pay or deliver the property to the rightful claimant may file an interpleader suit.

Rule 2 — Payment into Court

Order 35, Rule 5 of the code provides for the persons who may not institute Interpleader suit.

Rule 3 — defendant is actually suing Plaintiff

According to Rule 5, an agent or tenant can not compel their prin. principal or landlord respectively for the purpose of compelling them to interplead.

for example: A deposits a box of jewels with B as his agent. C alleges that the jewells were wrongfully obtained from him

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by A and claims them from B. B can not institute a interpleader suit against A and C.

Rule-4 → Procedure at first hearing

The order of dismissal of suit under Section 88 or an adjudication upon the claims in such suit amounts to decree and is appealable. A decision under Rules 3, 4 and 6 of Order 35 is an appealable order. [Order 43, Rule 1(P)].

Rule 5 → tenant and agent cannot institute interpleader suit.

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Mains Evaluation By Edzorb Law

N Nishtha Singh

★★★★★ 09/12/2022

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Garvit Dave

★★★★★ 25/08/2021

Dear ma'am Greetings of the day! On a personal note, Edzorb law helped me a lot, rather it helped me immensely in my preparation. As we all know that standard books for the preparation are very bulky & language is also hard but the way Edzorb team has put effort to explain the concept through pictorial example which are related to our day to day life, thus making it very simple and easy to understand various provision. With regards to notes, I would contend that they are very simplified and provide in depth knowledge of every subject, one can never feel tired while studying. The best thing is the highlighted portion of it. To summarise The course, is very helpful for quick revision. Thank you EDZORB for your extreme efforts. With best regards Garvit dave



Nisha Singh

★★★★★ 02/01/2023

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