



# DELHI LAW ACADEMY

## CIVIL PROCEDURE CODE

---

**Sample : Sections 1 - 14**

Delhi Law Academy – India's Finest Law Coaching

DU LLB, CLAT and Judicial Services

[www.delhilawacademy.com](http://www.delhilawacademy.com)

All materials, copyrights and trademarks are rights of their respective owners



## CIVIL PROCEDURE CODE [Sections 1 - 14]

### Section 1

- This Act Shall come into force
  - on the first day of January 1909

### Section 2

#### Definitions

(1) " Code " includes rules

(2)

- " decree " means the *formal expression of an adjudication*
  - which, so far as regards the Court expressing it
  - ***conclusively determines the rights of parties***
  - with regard to ***all or any of the matters in controversy*** in the suit
- and may be either preliminary or final
- It shall be *deemed to include*
  - rejection of a plaint
  - determination of any question u/s 144
- but *shall not include*
  - any adjudication from which an appeal lies as an appeal from an order or
  - any order of *dismissal for default*

### Explanation

- A decree is preliminary
  - when further proceedings have to be taken
  - before the suit can be completely disposed of
- It is final
  - when such adjudication completely disposes of the suit

(3)

- " decree-holder " means
  - any person in whose favor a decree has been passed
  - or an order capable of execution has been made

(10)

- " judgment-debtor " means
  - any person against whom a decree has been passed
  - or an order capable of execution has been made



(11)

- " legal representative " means
  - a person who in law represents the estate of a deceased person
  - and includes any person who intermeddles with the estate of the deceased

(12)

- " mesne profits " of property means
- those profits which the person in wrongful possession of such property
  - actually received
  - or might with ordinary diligence have received therefrom,
- together with interest on such profits
- but *shall not include* profits due to improvements
  - made by the person in wrongful possession

(13)

- "movable property" includes
  - growing crops

(14)

- " order " means
  - *formal expression of any **decision** of a Civil Court*
  - which is not a decree

(15)

- "pleader" means
  - any person entitled to appear and plead for another in Court
  - and includes an advocate, a vakil and an attorney of a High Court

(18)

- " rules " means rules and forms contained in First Schedule
  - or made under section 122 or 125

## Section 3

### Subordination of Courts

- District Court is subordinate to High Court
- Every Civil Court of a grade inferior to that of a District Court
  - is subordinate to High Court and District Court

## Section 6

### Pecuniary jurisdiction

- Except where expressly provided



- No Court shall have jurisdiction over suits
  - amount or value of the subject-matter of which
  - exceeds pecuniary limits of its ordinary jurisdiction

## PART I SUITS IN GENERAL

### Section 9 Courts to try all civil suits unless barred

- Courts shall have jurisdiction to try all suits of a civil nature
  - **except** suits whose cognizance is either expressly or impliedly barred

#### Explanation

- A suit in which right to property or to an office is contested
  - is a suit of a civil nature
  - even when such right depends entirely on religious rites or ceremonies

#### **Analysis of section 9**

##### **Normal rule and burden of proof**

- It is well settled that the court would normally lean in favour of construction which would uphold retention of jurisdiction of the civil court.
- The burden of proof in this behalf shall lie on the party who asserts that the civil court's jurisdiction is ousted.
- Source: Dwarka Prasad Aggarwal v. Ramesh Chandra Aggarwal [2003 SC]

##### **How can jurisdiction of Civil Courts be excluded?**

- It is settled law that exclusion of jurisdiction of Civil Courts is not to be readily inferred, but that *such exclusion must either be **explicitly expressed or clearly implied***.
- Source: Secretary of State v. Mask [1940 PC]

##### **Question**

- Which law is to be applied for determining jurisdiction of court, existing law on the date of institution of suit or on the date on which the suit comes up for hearing ?

##### **Ans**

- If court has jurisdiction to try the suit when it comes for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date of institution of suit question.



- Source: Sudhir Angur v. M Sanjeev [2006 SC]

## Basis for determining jurisdiction?

- The question of jurisdiction is to be determined primarily on the averments made in the plaint.
- Source: Ramesh Chand v. Anil Panjwani [2003 SC]

## Illustration of cases where jurisdiction of a civil court is ousted:

### Case 1: Industrial disputes

- The appropriate forum for resolution of an industrial dispute is the forum constituted under the Industrial Disputes Act 1947. Jurisdiction of civil court is impliedly barred in such cases.
- Source: CT Nikam v. Municipal Corporation of Ahmedabad [2002 SC]

### Case 2: Disputes under Tenancy Acts

#### Question

Where in a suit for specific performance an issue arises whether the plaintiff is an agriculturist or not, would the Civil Court have jurisdiction to decide the issue or the Civil Court would have to refer the issue under S. 85-A of the Tenancy Act to the authority constituted under the Act, viz., the Mamlatdar?

#### Ans

It may be that jurisdiction may be conferred on the Mamlatdar to decide whether a person is an agriculturist within the meaning of the Tenancy Act *but it does not ipso facto oust the jurisdiction of the Civil Court to decide that issue if it arises before it in a civil suit. Unless the Mamlatdar is constituted an **exclusive forum** to decide the question, conferment of such jurisdiction would not oust the jurisdiction of the Civil Court.*

The legislative scheme that emerges from a combined reading of Ss. 70, 85 and 85-A appears to be that when in a civil suit properly brought before the Civil Court an issue arises on rival contentions between the parties which is required to be decided by a competent authority under the Tenancy Act, the Civil Court is *statutorily required* to stay the suit and refer such issue or issues to such competent authority under the Tenancy Act.

It would thus appear that the jurisdiction of the Civil Court to decide any issue which is required to be decided by any competent authority under the Tenancy Act is **totally ousted**. By camouflage of treating issues arising in a suit as substantial or incidental or principal or subsidiary, *Civil Court cannot arrogate to itself jurisdiction which is statutorily ousted.*



Source: Gundaji Satwaji Shinde v. Ramchandra Bhikaji Joshi [1979 SC]

## Illustration of a case where jurisdiction of a civil court is NOT ousted:

### Case 3: Disputes under SRA

In a suit for specific performance the defendant contended that if the contract is enforced it would violate S. 35 of the Tenancy Act in that the plaintiff's holding after the appointed day would exceed the ceiling and that acquisition in excess of the ceiling is invalid.

The legislature has not declared the transfer or acquisition invalid, for S.84-C provides that the land in excess of the ceiling shall be at the disposal of the Government when an order is made by the Mamlatdar. The invalidity of the acquisition is, therefore, only to the extent to which the holding exceeds the ceiling prescribed by law and involves the consequence that the land shall vest in the Government.

It would thus transpire that *after the acquisition is completed, the question may arise whether ceiling has been exceeded and in that event the Mamlatdar in a suo motu inquiry can declare the transfer invalid to the extent the holding exceeds the ceiling.*

Thus, jurisdiction of the civil court is not ousted.

Source: Jambu Rao Satappa v. Neminath Appayya [1968 SC]

### Distinction between case 2 and case 3:

The distinguishing feature of case 1 is that S. 63 bars purchase of agricultural land by one who is not an agriculturist and, therefore, *the disqualification is at the threshold* and unless it is crossed the Court cannot decree a suit for specific performance of contract for sale of agricultural land and in order to dispose of the contention which stands in the forefront a reference to the Mamlatdar under Section 70 read with Ss. 85 and 85-A is inevitable.

In case 2, specific performance of the contract can be ordered by the civil court, and thereafter if the ceiling limit is exceeded, the Mamlatdar can take action holding the excess to vest in Govt.

### Question:

Whether jurisdiction can be conferred on a civil court by agreement?

### Ans:

- By agreement the parties cannot confer jurisdiction where none exists on a court to which the Code applies. But this principle does not apply when the parties agree to submit to the jurisdiction of a foreign court.
- Source: Modi Entertainemnt Network v. WSG Cricket [2003 SC]



## 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 claim
- where such suit is pending
  - in the *same or any other Court in India*
  - or before the Supreme Court

## Explanation

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

## **Analysis of section 10**

### **Fundamental test for applicability of section 10**

- The fundamental test to attract section 10 is whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in a case where the **whole** of the subject matter in both the suits is identical.
- The words “directly and substantially in issue” are used in contra-distinction to “incidentally or collaterally in issue”. Therefore section 10 would apply only if there is **identity** of the matter in issue in both the suits.
- Source: National Institute of Mental Health v. C Parameshwara [2005 SC]

### **Scope and interpretation of word "trial" in section 10**

According to Webster Comprehensive Dictionary, trial *means the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue*. Thus in its widest sense it would include all the proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the Court.

However, the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision. The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue.

## Question

Whether the bar to proceed with the trial of subsequently instituted suit, contained in Section 10 of the Code of Civil Procedure, 1908 is applicable to summary suit filed under Order 37 of the Code?



## Ans

The word 'trial' in Section 10 in the context of a summary suit, cannot be interpreted to mean the entire proceedings starting with institution of the suit by lodging a plaint. *In a summary suit the 'trial' really begins after the Court or the Judge grants leave to the defendant to contest the suit.*

Therefore, the Court dealing with the summary suit can proceed up to the stage of hearing the summons for judgment and passing the judgment in favour of the plaintiff if (a) the defendant has not applied for leave to defend or if such application has been made and refused or if (b) the defendant who is permitted to defend fails to comply with the conditions on which leave to defend is granted.

## Scope of section 10

- The provision is in the nature of a **rule of procedure** and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matters.
- It is **not** a bar to the institution of a suit.
- It has been construed by the Courts as **not** a bar of the passing of interlocutory orders such as an order for consolidation of the later suit with the earlier suit or appointment of a Receiver or an injunction or attachment before judgment.
- The course of action which the Court has to follow according to Section 10 is *not to proceed with the 'trial'* of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose.

## Can a civil court pass an order in contravention of section 10?

- Section 10 enacts merely a rule of procedure and a decree passed in contravention thereof is **not a nullity**.
- Where a subsequently instituted suit can be decided **on purely legal points** without taking evidence, it is always open to the court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side.
- Source: Pukhraj Jain v. Gopal Krishna [2004 SC]

## Limitations of section 10

- The language of section 10 suggests that it is referable to a suit instituted in a civil court and it cannot apply to proceedings of other nature instituted under any other statute.





## Section 11

### Res judicata

- No Court shall try any suit
- in which the matter directly and substantially in issue
  - has been directly and substantially in issue
  - in a **former suit** between same parties or between parties under whom they claim
  - in a Court competent to try such subsequent suit
- and **has been heard and finally decided** by such Court

### Explanation I

- " 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 III

- The **matter** 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 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 be **deemed** to claim under persons so litigating

### Explanation VII

- Provisions of this section shall apply
  - to a proceeding for execution of a 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
  - was not competent to try the suit in which such issue has been subsequently raised

## **Analysis of section 11**

### **Literal meaning**

- The literal meaning of **res** is “everything that may form an object of rights and includes an object, subject matter or status” and **res judicata** literally means “a matter adjudged, a thing judicially decided”.

### **Principle**

- The principle of estoppel per rem judicatam is a rule of evidence.
- It is “*the broader rule of evidence which prohibits the reassertion of a cause of action*”. [Marginson v. Blackburn Borough Council]

This doctrine is based on two theories:

- finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy and
- interest of the individual that he should be protected from multiplication of litigation.

### **Objective**

- It serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action.

### **Reasoning**

- It is the cause of action which gives rise to an action. A cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment or give rise to another cause of action on the same facts.
- This is what is known as the general principle of res judicata.



## What is constructive res judicata?

- Res judicata is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.
- This rule has sometimes been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle.

## Scope of section 11

Section 11 of the Code of Civil Procedure relates to suits and former suits, and has, in terms, no direct application to a petition for the issue of a high prerogative writ.

## Applicability to writs

The general principles of res judicata and constructive res judicata have been acted upon in cases of renewed applications for a writ.

### Illustrations

(1) A writ petition followed by a regular suit

The question: whether a decision of the High Court on merits on a certain matter after contest, in a writ petition under Article 226, operates as res judicata in a regular suit with respect to the same matter between the same parties?

Ans: Yes: Gulab Chand Chhotala Parikh v. State of Bombay

Reasoning: On the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case, by a Court competent to decide it, will operate as res judicata in a subsequent regular suit.

(2) A writ petition followed by another writ petition

The question: whether the principle of constructive res judicata was applicable to writ petitions?

Ans: Yes: Devilal Modi v. Sales Tax Officer Ratlam

Reasoning: If the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy



(3) A writ petition followed by a regular suit

## Question

Whether a new plea not taken in the original writ petition could be taken in a subsequent suit before a civil court?

Ans: No: State of U.P. v. Nawab Hussain

Reasoning: In the writ petition filed in the High Court the plea that by virtue of Article 311(1) of the Constitution he could not be dismissed by the Deputy Inspector-General of Police as he had been appointed by the Inspector-General of Police was not raised. Since this was an important plea which was within the knowledge of the party and could well have been taken in the writ petition, but he contended himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide.

It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata.

## Conclusions

- **Provisions of Section 11 CPC are not exhaustive** with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit.
- It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter.
- *The nature of the former proceeding is immaterial.*

## Question

Whether res judicata applies between different stages of the same suit?

## Ans

- The principle applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party, it cannot be allowed to be reargued by him at a subsequent stage in the same suit or proceedings.
- Source: CV Rajendran v. Mohammed Kunhi [2002 SC]

\



## Cases where res judicata is not applicable

### Case 1

- A jurisdictional question if wrongly decided would not attract the principle of res judicata. When an order is passed without jurisdiction the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking a procedural principle.
- Source: Sonipat Cooperative Sugar Mills v. Ajit Singh [2005 SC]

### Case 2

- Dismissal of writ petition and SLP **in limine** would not operate as res judicata in subsequent suit on same cause of action.

### Case 3

- First writ petition was filed on the ground of apprehended bias. Subsequent second petition was filed on allegations of actual bias. The second petition is not barred by res judicata.
- Source: GN Nayak v. Goa University [2002 SC]

**Question:** Whether res judicata binds co-defendants?

**Ans:** Yes.

### Requirements

- *For a judgment to operate as res judicata between or among co-defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants; (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit and (3) that the Court actually decided the question.*
- Source: Iftikhar Ahmed v. Syed Meharban Ali [1974 SC]

**Question:** Whether res judicata can bind co-plaintiffs?

**Ans:** Yes.

### Requirements

- A previous decision should operate as res judicata between co-plaintiffs if all the above conditions are mutatis mutandis satisfied.
- Source: Chandu Lal v. Khalilur Rahman [1950 PC]



## Section 13

## When foreign judgment not conclusive

- A foreign judgment **shall be conclusive**
  - as to any matter thereby directly adjudicated
  - between the same parties or between parties under whom they claim
- **except**
  - (a)
    - where it has not been pronounced by a Court of competent jurisdiction
  - (b)
    - where it has not been given on merits of the case
  - (c)
    - where it appears on the face of proceedings
      - to be founded on an incorrect view of international law or
      - a refusal to recognize the law of India in cases in which such law is applicable
  - (d)
    - where proceedings in which judgment was obtained are opposed to natural justice
  - (e)
    - where it has been obtained by fraud
  - (f)
    - where it sustains a claim founded on a breach of any law in force in India

## **Analysis of section 13**

**Law laid down by the Supreme Court regarding enforceability of foreign judgments in matters arising out of matrimonial disputes:**

Clause (a):

- *This clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognizes as a court of competent jurisdiction to entertain the matrimonial dispute.*
- *Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court.*



Clause (b):

- This clause should be interpreted to mean (a) that *the decision of the foreign court should be on a ground available under the law under which the parties are married*, and (b) that *the decision should be a result of the contest between the parties*.
- The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself to the jurisdiction of the court and contests the claim or agrees to the passing of the decree with or without appearance. *A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court should not be considered as a decision on merits of the case.*

Clause (c):

- Marriages which take place in this country can only be under either the customary or the statutory law in force in this country. Hence, *the only law that can be applicable to the matrimonial disputes is the one under which the parties are married, and no other law*. When, therefore, a foreign judgment is founded on a jurisdiction or on a ground not recognized by such law, it is a judgment which is in defiance of the Law.

Clause (d):

- In matters concerning family law such as matrimonial disputes, *if the rule of audi alteram partem has any meaning with reference to proceedings in a foreign court, it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent himself and contest effectively the said proceedings.*
- If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice.

Clause (e):

- *The fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.*

Clause (f):

- When a foreign judgment is founded on a jurisdiction or on a ground not recognized by the matrimonial law under which the parties are married, such judgment would obviously be in breach of the matrimonial law in force in this country. Conclusion
- *The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married.*



There are three **exceptions** to this rule:

- where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married
- where the respondent voluntarily and effectively submits to the jurisdiction of the forum and contests the claim which is based on a ground available under the matrimonial law under which the parties are married
- where the respondent consents to the grant of the relief although jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

## Section 14

## Presumption as to foreign judgments

- Court **shall presume**
  - upon production of any document purporting to be a certified copy of a foreign judgment
  - that such judgment was pronounced by a Court of competent jurisdiction
- unless the contrary appears on record
  - but such presumption may be displaced
  - by proving want of jurisdiction

## **CASE LAW ON SECTIONS 1-14 CPC**

1. Gundaji Satwaji Shinde v. Ramchandra Bhikaji Joshi [1979 SC]
2. Jambu Rao Satappa v. Neminath Appayya [1968 SC]
3. Indian Bank v. Maharashtra Co-Op. Marketing Federation [1998 SC]
4. State of U.P. v. Nawab Hussain [1977 SC]
5. Devilal Modi v. Sales Tax Officer Ratlam [1965 SC]
6. GulabChand Parikh v. State of Bombay [1964 SC]
7. Iftikhar Ahmed v. Syed Meharban Ali [1974 SC]
8. Narasimha Rao v. Y. Venkata Lakshmi [1991 SC]

\*\*\*\* All judgments have been summarized by DLA \*\*\*\*