



DELHI LAW ACADEMY

CIVIL PROCEDURE CODE

Sections 9 – 10

Jurisdiction & Res Subjudice

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CIVIL PROCEDURE CODE

TOPIC 1: JURISDICTION OF CIVIL COURTS

Section 9

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

Explanatory Notes from DLA:

Suits of Civil Nature:

- A suit in which right to property is contested
 - is a **suit of a civil nature**
- A suit in which right to an office is contested
 - is a **suit of a civil nature**

Question:

- Will such a suit be still of a civil nature if the right depends entirely on questions of religious rites or ceremonies?

Ans:

- 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 questions of religious rites or ceremonies

Normal rule regarding jurisdiction of civil courts:

- The court would normally lean in favour of a construction which would uphold retention of jurisdiction of the civil court.



Burden of proof regarding jurisdiction of civil courts

- The burden of proof in this behalf shall lie on the party who asserts that the civil court's jurisdiction is ousted.

Authority: *Dwarka Prasad Aggarwal v. Ramesh Chandra Aggarwal* [2003 SC]

Question:

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

Ans:

- Exclusion of jurisdiction of Civil Courts is not to be readily inferred, but *such exclusion must either be explicitly expressed or clearly implied.*

Authority: *Secretary of State v. Mask* [1940 PC]

Where jurisdiction of civil courts is expressly barred:

Example 1: Bombay Tenancy and Agricultural Lands Act, 1948: Section 85

- No Civil Court shall have jurisdiction to decide any Question.... which is under this Act required to be decided by the Mamlatdar....
- No order of the Mamlatdar... made under this Act shall be questioned in any Civil or Criminal Court.

Example 2: Rajasthan Rent Control Act 2001: Section 18(1)

- Only the Rent Tribunal and **no civil court**
 - shall have jurisdiction to hear and decide petitions
 - on disputes between a landlord and tenant under this Act

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?**



Ans

- By an express provision contained in S. 85 of the Tenancy Act, jurisdiction of the Civil Court to decide any question under the Tenancy Act required to be decided by the competent authority is ousted.
- There is, therefore, no escape from the fact that the legislature has expressly ousted the jurisdiction of the Civil Court to decide any question which is under the Tenancy Act required to be decided by the Mamlatdar
- 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 \[1979 SC\]](#)

Where jurisdiction of civil courts is impliedly barred:

Example: **Industrial disputes:**

- Appropriate forum for resolution of an industrial dispute is the forum constituted under the Industrial Disputes Act, 1947. Jurisdiction of Civil Courts is impliedly barred in such cases.

Authority: [C.T. Nikam v. Municipal Corporation of Ahmedabad \[2002 SC\]](#)

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.

Authority: [Sudhir Angur v. M Sanjeev \[2006 SC\]](#)



Question:

- **What is the Basis for determining jurisdiction?**

Ans:

- The question of jurisdiction is to be determined primarily on the averments made in the plaint.

Authority: **Ramesh Chand v. Anil Panjwani** [2003 SC]

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.

Authority: **Modi Entertainemnt Network v. WSG Cricket** [2003 SC]



TOPIC 2: STAY OF SUIT: RES SUB JUDICE

Section 10

- 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

Explanatory Notes from DLA:

OBJECT OF SECTION 10

- 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.

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.

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 \[2005 SC\]](#)

Meaning of 'TRIAL' in section 10

- The word ‘trial’ is no doubt of a very wide import. In legal parlance it means a judicial examination and determination of the issue in civil or criminal Court by a competent Tribunal.
- According to Webster Comprehensive Dictionary, it 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.
- The word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision.



SECTION 10 v. ORDER 37

- The provision contained in Section 10 is a general provision applicable to all categories of cases. The provisions contained in Order 37 apply to certain clauses of suits.
- One provides a bar against proceeding with the trial of a suit, the other provides for granting of quick relief.
- Both these provisions have to be interpreted harmoniously so that the objects of both are not frustrated.
- The stage of determination of the matter in issue will arise in a summary suit only after the defendant obtains leave. The trial would really begin only after leave is granted to the defendant.
- 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.

Question:

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

Ans:

- *In a summary suit the 'trial' really begins after the Court or the Judge grants leave to the defendant to contest the suit.*
- 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
 - (b) the defendant who is permitted to defend fails to comply with the conditions on which leave to defend is granted

Source: [Indian Bank v. Maharashtra Co-Op. Marketing Federation \[1998 SC\]](#)



Question:

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

Ans:

- 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.
