

PAHUJA LAW ACADEMY

9821593226 / 9821593227



THE CODE OF CIVIL PROCEDURE, 1908

RES SUB JUDICE AND RES JUDICATA

Mains Questions

Q.1. Does the code of civil procedure make any provision from preventing courts of concurrent jurisdiction from trying at the same time two parallel suits in respect of same cause of action? If so what? Discuss.

Q.2. A suit for partition of premise has filled by one of the heirs. Subsequently another suit for eviction of tenant from their premises was filled by another heir? Can the subsequent suit be stayed in view of section 10 of C.P.C?

Q.3. B residing in Calcutta has an agent at Calicut employed to sell his goods there. A sues B in Calicut claiming a balance due an account in respect of dealing between him and B. During the pendency of the suit in Calicut court competent to grant relief B institute a suit against A in Calcutta for an account and damages caused by A's alleged negligence. Can Calcutta court proceed with trial of B's suit?

Q.4. what is the difference between res sub judice and res judicata?

Q.5. what is the effect of contravention of doctrine of res sub judice?

PAHUJA LAW ACADEMY

THE CODE OF CIVIL PROCEDURE, 1908

RES SUB JUDICE AND RES JUDICATA

CLASS NOTES

Res sub judice: Stay of suit

According to s.10 the conditions for the application of this section are as follows:

1. Two suits
2. Matter Directly and substantially in issue
3. Same parties
4. Pending in the court
5. Competent court
6. Same title

(1) Two suits

- One previously instituted and other subsequently instituted
- What is suit?
- When the suit is said to be instituted.
- Whether the suit includes pending appeal.
- Whether the suit includes an application to leave to appeal to the Supreme Court.
- Whether the suit includes an application under s.47.

(2) Directly and substantially in issue

- The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit. .

- Directly means at once, immediately, without intervention.
- Substantially means essentially, materially or in a substantial manner.
- A collateral or incidental issue.
- It is something short of certainty but indeed more than suspicion.
- A matter is said to be substantially in issue if it of importance for the decision of the case.
- A matter cannot be said to have been directly and substantially in issue in a suit unless it was alleged by one party and denied or admitted by other party.
- The question whether or not a matter is directly and substantially in issue would depend upon whether a decision on such issue would materially affect the decision of the suit,
- What is the criterion to determine this question?
- E.g. A sues B for rent due. The defence of B is that no rent is due. Here the claim for rent is the matter in respect of which the relief is claimed. The claim of rent is, therefore, a matter directly and substantially in issue.
- A sues B (i) for a declaration of title to certain lands-and (ii) for the rent of those lands. B denies A's title to the lands and also contends that no rent is due. in this case, there are two matters in respect of which relief is claimed ,viz (i) the title to the lands and (ii) the claim for rent. Both these matters are, therefore, directly and substantially in issue.

(3) Same Parties

- A party is a person whose name appears on the record at the time of the decision.
- A party may be a plaintiff or a defendant.
- Whether the following are parties to the suit
 - (i) A party to the suit whose name is struck off
 - (ii) Privies
 - (iii) Representative suit
 - (iv) Who dies pending the suit but whose name continues on record erroneously
 - (v) Pro forma defendant
 - (vi) Interveners
 - (vii) Minors

(4) Pending in the court

- The previously institute suit must be pending
 - (i) In the same court in which subsequent suit is brought; or
 - (ii) In any other court in India; or
 - (iii) In any court beyond the limits of India established or continued by the Central Government; or

(iv) Before the supreme court of India

(5) Competent court

- Competent to try means competent to try the subsequent suit if brought at time the first suit was brought.
- The court in which the first suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.

(6) Same title

- Same title means same capacity '
- It has nothing to do with the cause of action or with the subject matter on which he sues or is sued.
- The test is identity of title in the two litigations and not the identity of the subject
- matter involved in two cases

- **Object**

- It intends to protect a person from multiplicity of proceedings.
- It also avoids conflict of decisions.
- It also aims to avert inconvenience to the parties.
- It gives effect to the rule of res judicata.

POINTS TO BE REMEMBERED

1. The section does not bar the institution of the suit but only bars a trial
2. The subsequent suit cannot be dismissed by a court but is required to be stayed
3. Provisions contained in section 10 are mandatory (Manohar Lal Chopra v. Seth Hiralal).
4. What is the test for applicability of section 10?
5. Whether section 10 bars an Indian court to try a subsequently instituted suit if the previously instituted suit is pending in a foreign court.
6. A decree passed in contravention of section 10 is not a nullity and, therefore, cannot be disregarded in execution proceedings.
7. Whether it can be waived by the parties.
8. Inherent power of the court.

9. Consolidation of the suits.
10. interim orders
11. If the court is satisfied that subsequent suit can be decided purely on legal point, it is open to the court to decide such suit.

PAHUJA LAW ACADEMY

THE CODE OF CIVIL PROCEDURE, 1908

RES SUB JUDICE AND RES JUDICATA

Preliminary

1. Principle of res-subjudice is contained in
 - (a) Section 10 of CPC
 - (b) Section 11 of CPC
 - (c) Section 13 of CPC
 - (d) Section 14 of CPC
2. Under Section 10 of CPC, a suit is liable to be
 - (a) Stayed
 - (b) Dismissed
 - (c) Rejected
 - (d) Either (a) or (b) or (c)
3. For the application of the principle of res-subjudice which of the following is essential
 - (a) Suits between the same parties or litigating under the same title
 - (b) The two suits must be pending disposal in a court
 - (c) The matters in issue in the two suits must be directly and substantially the same
 - (d) All the above.
4. Section 10 of CPC does not apply
 - (a) When the previous suit is pending in the same court

- (b) When the previous suit is pending in a foreign court
- (c) When the previous suit is pending in any other court
- (d) When the previous suit is pending in a court outside India established or contained by the Central Government

5. Under the principle of res-judice

- (a) The second suit has to be stayed
- (b) The previous suit has to be stayed
- (c) Either (a) or (b) depending on the facts & circumstances of the case
- (d) Either (a) or (b) depending on the valuation of the suit for the purpose of jurisdiction.

6. Provisions of section 10 of CPC are

- (a) Directory
- (b) Mandatory
- (c) Non mandatory
- (d) Discretionary.

7. Section 10 can come into operation

- (a) Before filing of written statement in the subsequent suit
- (b) Before settlement of issues in subsequent suit
- (c) After settlement of issues in subsequent suit
- (d) All the above.

8. Res subjudice means

- (a) Matter under control
- (b) Matter under judgment
- (c) Matter without any control
- (d) None of the above

9. Daryao v state of U.P relates to

- (a) Res sub judice
- (b) Res judicata
- (c) Lis pendens
- (d) Restitution

10. Which of the following is not true of res sub judice

- (a) It bars the trial of a suit
- (b) it applies when the appeal against the first suit is pending
- (c) It is a rule of procedure.
- (d) It cannot be waived by the parties.

PAHUJA LAW ACADEMY (PLA)