PGS NATIONAL COLLEGE OF LAW

CIVIL PROCEDURE CODE UNIT-1

Q1. Discuss the essential features of Res judicata . What is constructive Res Judicata ? illustrative .

Ans **Meaning of Res Judicata:**

In simple terms, the doctrine of res judicata means rule of finality or conclusiveness of judgment. The essence of the provision contained in Section 11 is that once a matter is finally decided by a competent court, it cannot be reopened in a subsequent litigation. Thus this section grants finality to the judgment of the competent court. Such finality is in relation to the points of the fact and points of law that have been decided earlier. Such finality acts as a bar on every subsequent suit between same parties. In absence of this rule, there will be no end to litigation and parties would be put to constant trouble, harassment and expenses.

In ***Ramchandra Dagdu Sonavane v. Vithu Hira Mahar***," the Apex Court discussed the principle of res judicata. It was held that the doctrine of res-judicata is codified in Section 11 of the Code of Civil Procedure. Section 11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of res-judicata or the principle of the res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res-judicata is engrafted in Explanation IV of Section 11 of the Code of Civil Procedure and in many other situations also Principles not only of direct res-judicata but of constructive res-judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceedings between the same parties. The Principle of res-judicata comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the Principle of res-judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, deemed to have been constructively in issue and, therefore, is taken as decided.

Conception of Res Judicata

The doctrine of res judicata is based on three maxims viz., (i) **Nemo debet bis vexari pro una et eadem causa**, which means that no man should be vexed twice for the same cause; (ii) **Interest republicae ut sit finis litium** which means that it is in the interest of the State that there should be an end to a litigation; and (iii) **Res judicata pro veritate occipitur** which means that a judicial decision must be accepted as correct.

Object of Res Judicata:

The doctrine is directed towards bringing litigations to an end. A successful party may not be put to harassment opening up the same issue again. A litigation which cannot attain finality defeats its very

purpose. If there is no finality to it, the dispute can never be resolved. It is the duty of the State to see that disputes brought before judiciary are decided finally as early as possible.

Section 11 is checks such an unwarranted situation. The object of this section is to :

(a) give finality to the judgment of the court;

(b) protect a person from endless proceedings; and

(c) avoid re-determination of same issues which have already been adjudicated upon.

When Res Judicata applies:

Following conditions must exist for attracting the doctrine :

(a) There must be two suits, one former and the other later.

(b) The matter in issue should be identical in both the suits.

(c) Two its should be between the same parties.

(d) The parties to the suit of must be litigating under same title i.e., same capacity.

(e) The former suit must have been heard and finally decided by the court.

(f) The court must be competent to grant relief sought for.

When Res Judicata shall not apply :

The doctrine of Res Judicata shall have no application in following cases-

I)When a decree is a nullity being passed by the court having no jurisdiction

In Chandrabhai K. Bhoir v. Krishna Arjun Bhoir, it was held that order passed without jurisdiction would be a nullity and will be a an coram non judice. It is non-est in the eye of law. Principle of res judicata would not apply to such cases.

ii) Where the suit has been dismissed for non-prosecution

In State of Uttar Pradesh v. Jagdish Saran Agrawal, it was held that where the suit has been dismissed for non-prosecution, the decision cannot be said to be on merits and consequently, order would not operate as res judicata.

iii) Where an application is held to be infructuous

In Noharlal Verma v. District Co-operative Central Bank Limited, Jagdalpur, the question before Supreme Court was whether a decision holding an application as infructuous and not deciding on merits would operate as res judicata. It was held "No".

Iv) When a fresh cause of action arises

In Director, Cent. Marine Fisheries Res. Inst. v. A. Kanakkan, the Apex court held that when a fresh cause of action arises, the principles of res judicata would have no application.

v) When petition is withdrawn with liberty to prosecute remedy before other forum

In Haryana State Cooperative Land Development Bank v. Neelam,[2] the workman had withdrawn the writ petition for prosecuting remedy before Labour Court. The writ petition was not adjudicated on merits. It was held that withdrawal would not operate as res judicata.

vi) **When no speaking judgment is passed**

In Union of India v. Pramod Gupta, it was held that the principle of res judicata shall have no application in a case where a judgment is not a speaking one.

vii) Where the two forums have separate and independent jurisdiction

In Kirit Kumar Vs. Union of India, the Apex Court observed that the principle of res judicata is founded on the principle that where a court of competent jurisdiction has decided an issue, the same issue cannot be agitated again and again but this doctrine is inapplicable to the cases where the two forums have separate and independent jurisdiction.

viii) Where proceedings are criminal in nature

In Devendra v. State of Uttar Pradesh, it was held that applicability of the principle of Res judicata in criminal proceedings is impermissible.

To which proceedings Res Judicata applies :

Considering the underlying object, the doctrine applies to all judicial proceedings whether civil or criminal. It equally applies to quasi judicial proceedings of the tribunals other than the civil courts. Thus, the doctrine has wide application. It applies to civil suits, execution proceedings, arbitration proceedings, taxation matters, industrial adjudication, writ petition and other proceedings including criminal proceedings.

When the plea of Res Judicata may be raised :

The res judicata must be specifically pleaded. It requires to be proved by the party raising the plea. The plea must be raised at the proper stage of proceedings. The party who is likely to be affected by the bar

of res judicata must have notice of the same and the court must afford to such party a reasonable opportunity of defence. The court cannot suo motu decide the plea of res judicata, unless it is raised in defence. However, the plea of res judicata may be waived by the party.

Who has to prove Res Judicata:

The party who contends that an earlier decision operates as res judicata between the parties has to prove the same. In other words, the onus of proof as to application of res judicata lies on the party which raises the plea to that effect. Such party has to establish that the matter in issue in subsequent suit was also in issue in an earlier suit which was between the parties and which has been finally adjudicated upon by a competent court.

Q2 Narrate the provisions relating to place of suing as described in the code of civil procedure .

Ans Provisions of Sections 15 to 20 deal with the place of suing. "Place of suing" means venue for trial. These sections declare a general rule that a suit shall be instituted in the court of lowest grade competent to try it and within the local limits of whose territorial jurisdiction the property is situate.

Thus, Sections 15 to 20 governed the selection of court for institution of civil proceedings in relation to movable and immovable properties. They regulate the forum for institution of a suit. These provisions prescribe the appropriate court in which a suit for property may be brought having regard to the situation of the subject-matter of the suit. They set out rules for assumption as territorial jurisdiction by Indian courts in matters within their cognizance. However, non-compliance of the provisions of these sections relating to place of suing is not fatal to the suit. If the plaintiff prosecutes remedy before a wrong forum and the suit is decreed, such decree is not null and void merely on the ground that it came to be passed by incompetent court.

The actions contemplated by these sections can be classified into. three categories: (i) the actions relating to immovable property; (ii) the actions relating to person or movable property; and (iii) the mixed actions partly relating to immovable property and partly personal. The first and third kind of suits have been dealt with under Sections 16 to 19. Section 20 deals with the second kind of suits.

COURT IN WHICH SUITS TO BE INSTITUTED: [Section 15:

Every suit shall be instituted in the Court of the lowest grade competent to try it.

Ingredients of the provision : An examination of the language reveals that there are two ingredients of this provision viz., (i) the Court must be of the lowest grade i.e., most inferior in the hierarchy; and (ii) such court must also be competent to try the suit. It may be noted that a decree passed in breach of first ingredient is not a nullity. The reason is that this provision lays down a rule of procedure and not of jurisdiction. It does not take away the jurisdiction of a superior court to try the suit. Hence, where a suit

has been instituted in a competent but superior court and such court proceeds to pass a decree, it cannot be said that such decree is without jurisdiction. In view of this position, the decree passed by a superior competent court shall remain valid and executable.

SUITS TO BE INSTITUTED WHERE SUBJECT-MATTER SITUATE: (Section 16]:

Section 16 provides for institution of suits in relation to immovable property in the Court within the local limits of whose jurisdiction the property is situate. The provision has various parts viz., (i) the opening expression "subject to the pecuniary or other limitations prescribed by any law"; (ii) clauses (a) to (f) enumerating the disputes in relation to immovable and movable property and institution of suit in relation to such disputes in the court within whose jurisdiction the property is situate; (iii) proviso to the effect that a suit relating to compensation for wrong to immovable property held by defendant may also be instituted in the Court within whose jurisdiction the defendant actually and. voluntarily resides, or carries on business, or personally works for gain; and (iv) explanation to the effect that "property" means property situate in India.

SUITS FOR IMMOVABLE PROPERTY SITUATE WITHIN JURISDICTION OF DIFFERENT COURTS [Section 17] :

This section provides that where a suit relates to immovable property situate within the jurisdiction of different Courts, both the courts have territorial jurisdiction over such property and the suit may be instituted in any of the Courts within the local limits of whose jurisdiction any portion of the property is situate.

It may be noted that the expression "may be instituted" is employed in the language. It is meant to afford choice to the plaintiff as to forum for instituting the suit. Where the property is situate in different jurisdictions, the plaintiff is free to exercise his option as to which court he would like to move for redressal of his grievance. The plaintiff can bring the suit in any court within whose jurisdiction a part of property is situate.

The proviso attached to this section enacts that in respect of the value of the subject matter of the suit, the entire claim must be cognizable by such Court. In other words, the subject matter of the suit must be within the pecuniary jurisdiction of the court.

PLACE OF INSTITUTION OF SUIT WHERE LOCAL LIMITS OF JURISDICTION OF COURTS ARE UNCERTAIN: [Section 18

Sub-section (1) deals with the situation wherein the jurisdiction of courts is doubtful. Sometimes it becomes difficult to say with certainty that the property is situate within the jurisdiction of which court. The suit-property may be situate within the local limits of two or more courts but it is not sure which of the several courts has jurisdiction over such property. Such cases are dealt with by this section. It provides that where such uncertainty of jurisdiction is alleged and the court is satisfied that such

uncertainty exists, it may record a statement to that effect and then proceed to entertain and dispose of the suit in relation to such immovable property. The decree passed by such court shall be legal and valid and shall have the same effect as if the property were situate within the local limits of its jurisdiction.

The proviso attached to this sub-section enacts that the court which entertains, hears and tries such a suit and passes a decree must be otherwise competent in respect of nature and value of the suit.

Sub-section (2) deals with the situation wherein a statement as to uncertainty of jurisdiction is not recorded and a decree is passed. It such decree is challenged on the ground that it was passed without jurisdiction, the Appellate or Revisional Court shall not allow the objection. However, where the Appellate or Revisional Court is satisfied that no reasonable ground as to uncertain jurisdiction of court existed and there is failure of justice, it may allow the objection as to jurisdiction.

When a decree is passed in a suit without any question being raised about want of territorial jurisdiction of the court to entertain the suit, the decree must be recorded as valid and binding and cannot be called in question in another Tribunal.

Essentials of Section 18:

The essential ingredients of Section 18 are summarized below:

(i) There must be an allegation as to uncertainty of territorial jurisdiction of courts.

(ii) The court must be satisfied that there is ground for the alleged uncertainty.

(iii) The court must record a statement as to insure jurisdiction and thereupon proceed to entertain and dispose of any suit relating to that property.

(iv) The Court who proceeds to entertain and try the suit must be competent as regards the nature and value of the suit.

(v) The objection as to jurisdiction must be taken in the court of first instance otherwise the Appellate Revisional Court shall not allow such objection unless there has been a failure of justice.

SUITS FOR COMPENSATION FOR WRONGS TO PERSON OR MOVABLES : [Section 19]

Section 19 deals with a situation wherein the cause of action arises at one place and the defendant resides or carries on business or personally works for gain at another place. The cause of action arises at the place where wrong is done. Section 19 provides that in such cases, two courts shall be competent to entertain and try the suit for compensation :-(i) the court within whose local limits of jurisdiction wrong is done; (ii) the court within whose local limits of jurisdiction the defendant resides or carries on business or personally works for gain. This section also grants option to the plaintiff to move any one of these two courts having jurisdiction.

Essentials of the section : The provisions of this section can be invoked only when following conditions are satisfied :

(i) There must be a wrong done to a person or to movable property.

(ii) There must be a suit for compensation for that wrong.

(iii) The wrong must have been done at one place and the defendant must reside, or carry on business, or personally work for gain at another place.

OTHER SUITS TO BE INSTITUTED WHERE DEFENDANTS RESIDE OR CAUSE OF ACTION ARISES :

[Section 20]

Section 20 is a general section. It may be called as a section because it covers all other cases relating to forum which do not fall within the letter of Sections 15 to 19.

This section is designed to bring justice as near as possible to every man's doorsteps so as to ensure that the defendant is not put to undue trouble and expense of traveling long distances for his defence. Thus the purpose of the provisions of this section is to save the defendant from unnecessary difficulties.

However, when two or more courts are vested with the jurisdiction to entertain and try a suit, the choice of forum lies with the plaintiff. It is the plaintiff who decides that out of several competent courts, which court he would like to move. The defendant cannot insist on his being sued at a particular forum. Moreover, the plaintiff and defendant cannot confer upon a forum the jurisdiction by mutual consent or agreement.

Q3 Define Decree. What are its essential elements ? What are its kinds ? Distinguish it from order .

Ans DECREE [Section 2 (2)] :

The definition of the term says that "Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the 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 the rejection of a plaint and the determination of any question within Section 144, but shall not include :

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) 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, it may be partly preliminary and partly final."

A plain reading of above definition discloses that every order is not a decree. To constitute a decree, a decision must fulfill certain essential conditions viz., there must be a suit; there must be a decision in that suit; such decision must have been arrived at by the court in that suit; the decision must have been expressed on the rights of the parties in regard to all or any of the matters in controversy in that suit; the decision must be one which conclusively etermines rights of parties in that suit and; there must be a formal expression of the adjudication.

In **State of Rajasthan and others v. Raj Singh**, the Apex Court observed that C.P.C. defines "decree" to mean the formal expression of an adjudication which so far as regards the court expressing it, conclusively

Essential ingredients of a decree essential

The language of the definition of "decree" discloses that the constituents of a decree are:

(a) formal expression;

(b) adjudication by a civil court in a suit;

(c) conclusive determination of the rights of the parties; and

(d) matters in controversy in the suit.. In the absence of these ingredients, there can be no decree.

(a) Formal expression :

A decree is essentially a formal expression of adjudication by the court. Without form. expression, there can be no decree. An order is also formal expression of a decision of a civil court but it differs from a decree in the sense that a decree conclusively determines the rights of the parties with regard to all or any of the matters in controversy in a suit but an order does not. A judgment, in contrast to a decree or an order, is not a formal expression at all, instead it is the statement of a judge as to the basis on which a decree is drawn-up or an order is passed.

(b) Adjudication by a civil court in a suit :

Adjudication.-Adjudication means judicial finding in relation to rights of parties in a suit. In order to constitute a decree, there must be adjudication on disputed issues in a suit. In other words, unless there is a judicial finding in a controversy, an order passed shall not become a decree.

By a civil court.-It is essential that the dispute is adjudicated by a competent court of law since only a court is empowered to pass a decree in a matter before it. An order passed by an officer who is not a court, is not a decree.

In a suit.-The existence of a civil suit is essential. A "suit" is the process by which substantive right is recovered or enforced. Every suit commences with filing of a plaint. If there is no civil suit, there can be no decree. In other words, a decree can be passed in a suit only and not otherwise.

(c) Conclusive determination of the rights of the parties :

Rights of parties.--The adjudication of a court in a suit must determine the rights of parties.

Conclusive determination of rights of parties.-In order to constitute a decree, the rights of the parties to the suit must be conclusively determined. In other words, the decision of the court determining the rights of parties should be final one in respect of any or all the controversial issues. An order which does not decide a suit finally cannot. be a decree.

(d) Matters in controversy in the suit : The expression "matters in controversy in the suit" must not be understood as relating only to the merit of the case. It would cover any question relating to (i) the character and the status of a party suing; (ii) the jurisdiction of the court; (iii) the maintainability of a suit; and (iv) other preliminary matters which necessitate adjudication before a suit is enquired into. However, it does not include proceedings preliminary to institution of a suit; for example an application for leave to sue as a pauper and proceedings passed in execution as well as orders granting costs, an order of punishment for contempt. Thus, an adjudication not relating to matters in controversy cannot be called a decree.

Kinds of decree :

There are following kinds of decrees :

(a) Preliminary decree and Final decree :

The definition of decree includes preliminary decree as well as final decree. A "Preliminary Decree" is that decree which decides the rights of parties but does not completely dispose of the suit. But the "Final Decree" finally determines the rights of the parties in respect of all or any of the matters in controversy and also completely disposes of the suit.

In cases where both preliminary and final decrees are necessary, the preliminary decree declares the rights of parties and the final decree carries into fulfilment to preliminary decree, completely disposing of the suit. A suit shall be deemed to be concluded only after a final decree is made. Final decree cannot be amended. Final decree cannot go behind the preliminary decree on a matter determined by the preliminary decree. The preliminary decree is not dependent on the final decree but the final decree is dependant on and subordinate to the preliminary decree. Final decree does not extinguish the

preliminary decree but gives effect to it. A preliminary decree ascertains what is to be done, while the final decree states the result achieved by means of the preliminary decree.

(b) Contest decree and consent/compromise decree :

Ordinarily, the parties to a suit meticulously contest the matter and the court, after hearing the contentions of both sides, passes a decree determining their rights. Such a decree is termed as "contest decree".

Sometimes, during pendency of the suit, the rival parties reconcile and reach a compromise on the issues in dispute. In such cases, the parties to suit pray the court for passing of a decree in accordance with the terms and conditions of their mutual settlement or compromise. Such a decree is known as "consent or compromise decree".

(c) Ex-parte decree :

The term "ex-parte" denotes "on behalf of one side" or "without hearing the other side". An ex-parte decree is that which is passed without hearing the other side.

In *Saroja v. Chinnusamy*, the Apex Court held that an ex-parte decree is as good and effective as a decree passed after contest and would operate as res judicata on the same principles as a decree passed after contest, unless the party challenging the ex-parte decree satisfies the court that such an ex-parte decree was obtained by fraud or collusion.

Some examples of decrees :

(a) A decision determining the rights of one party is a decree. (b) An order rejecting the plaint on whatever grounds, including that of non-payment of court fee, is a decree.

Distinction between a decree and an order :

every adjudication of a court of law would be either a decree or an order but it cannot be both. To be called as a decree, any decision of formal Every adjudication of a court of law would be either a decree or an court must fulfil certain requirements viz., there must be : (a) a expression; (b) of an adjudication given by a competent court of law; (c) in a civil suit; (d) conclusively determining; (e) the rights of parties to the suit; (f) in the matters in controversy in the suit. When all these conditions are satisfied, then only a decision shall become a decree. No partial fulfilment would suffice. Non-fulfilment of any of these ingredients would render a decision an order only and not a decree. There are some common elements in a decree and an order. They are -

(a) both relate to matters in controversy;

(b) both are decisions given by court;

(c) both are adjudications of a court of law; and

(d) both are formal expression of a decision

It may be borne in mind that both a decree and an order are formal expressions of a decision of a civil court, but the fundamental difference is that whereas a decree conclusively determines the rights of the parties with regard to all or any of the matters in controversy in a suit, an order does not. Moreover, a decree may be either preliminary or final but an order cannot be preliminary or final.

the points of distinction between a decree and an order can be summarized as under :

(a) A suit which is commenced by presentation of a plaint only, culminates into a decree. In other words, a decree can be passed only in those suits which have been instituted by filing of a plaint. But, an order may originate in a suit which has either been begun by presentation of a plaint or may result from proceedings commenced by filing of a petition or application.

(b) A decree is an adjudication conclusively determining the rights of parties with regard to all or any matters in controversy. But, an order may not finally determine such rights.

(c) Decree may be preliminary or final but an order cannot be preliminary. It is always final.

(d) There can be only one decree in a suit (except where both preliminary and final decree is passed) but there can be number of orders passed in a suit..

(e) Every decree is appealable (unless otherwise expressly provided) but every order cannot be challenged in an appeal.

(f) There can be two appeals against a decree viz., first appeal before the appellate court and second appeal before the High Court but no second appeal lies in case of appealable orders.