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Subject : Civil Procedure code and
Limitation Act

(B.A LL.B VI Semester)

Unit I : Jurisdiction

Topic : Res judicata

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Res judicata

- ❖ Section 11. Res judicata.- No court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit in which issue has been subsequently raised, and has been heard and finally decided by such Court.
- ❖ The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.
- ❖ For the purposes of this section, the competence of Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

- ❖ The matter above referred “to must” in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
- ❖ 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.
- ❖ Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.
- ❖ 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, for the purposes of this section, be deemed to claim under the persons so litigating.

- ❖ The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit.
- ❖ Issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.
- ❖ 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 the suit in which such issue has been subsequently raised.

- ❖ Section 11 embodies the doctrine of res judicata. C.P.C. (Amendment) Act, 104 of 1976 has extended the scope of res judicata.
- ❖ Its application has been extended to execution and orders and to the decision of Court of limited jurisdiction notwithstanding the fact that court of limited jurisdiction is not competent to try subsequent suit.
- ❖ This is with a view to shorten litigation.
- ❖ Res judicata meaning is a case or suit already decided.
- ❖ In simple language it means that a final judgment of a Competent Court of law may not be disputed on the issue it has finally settled by the parties or their successors in any subsequent legal proceeding.

Object

The doctrine of res judicata is based on three Latin Maxims:

1. Nemo debet bis vexari pro una et eadem causa, that is no one shall be vexed twice over for the same cause of action;
2. Interest reipublicae ut sit finis litium, that is, it is in the interest of the state that there should be an end to litigation; and
3. Res judicata pro veritate accipitur, that is a judicial decision must be accepted as correct.

Distinction between Res judicata and Res sub-judice

The doctrine of res judicata as embodied under Section 11 is clearly distinguishable from the principle of res subjudice as enacted under Section 10.

Both differ on following counts:

- Res judicata relates to a matter already decided that is, a matter on which a judgment has already been pronounced (res judicata) where as res sub-judice relates to a matter pending judicial enquiry or the course of trial (trial sub-judice).

- Both differ as regards object also. While the object of res sub-judice is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same course of action same subject matter and same relief.
- whereas the object of res judicata is that there should be an end to litigation, that no man should be vexed twice over the same cause and that judicial decision must be accepted as correct.
- Res subjudice bars the trial of a suit in which the matter directly and substantially in issue is pending judicial decision in a previously instituted suit by staying the trial of the latter suit.
- While res judicata bars altogether the trial of a suit or an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit.

Thank You