

RES-JUDICATA (THE THING HAS BEEN JUDGED)**-PUJA DEVNATH¹****Introduction:**

Res judicata is a phrase which has been evolved from a Latin maxim, which means “ the thing has been judged ’, meaning there by that the issue before the court has already been decided by another court, between the same parties there fore, the court will dismiss the case before it as being useless. The concept of Res Judicata is applicable in case of civil as well as criminal legal system.

Res Judicata was mostly apply to avoid unnecessary waste of time of the judicial system. And, therefore, the same case cannot be taken up again either in the same or in the different court of India. A prevailing plaintiff may not recover damages from the defendant twice for the same injury.

Res Judicata in a nut shell is a Judicial concept wherein the court do not allow a petition to be filed in the same or the other court for the doctrine of Res Judicata would apply and the party would not be allowed to file the petition or to continue the petition. Although the civil procedure does not apply to the proceedings other than suits. In Administrative Law, the concepts related to the write proceedings.

The full Latin maxim which has, over the years, shrunk to mere “ Res Judicata ” is “Res Judicata pro veritate accipitur”. The concept of Res Judicata finds it’s evolve ment from the English Common Law system, being derived from the overriding concept of Judicial Economy, consistency and finality.

According to the dictionary meaning, ‘Res Judicata’ means a case or suit involving a particular issue between two or more parties already decided by a court. If either of the parties approaches the same issue, the suit will be struck by the law of ‘Res Judicata’.

¹ Student, B.A.,L.L.B. 7th Semester, Tezpur Law College, Assam

Section 11 of code of civil procedure deals with this concept. It enacts that once a matter is finally decided by a competent court; no party can be permitted to reopen it in a subsequent litigation. In the absence of such a rule there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses. It embodies the doctrine of Res Judicata or the rule of conclusiveness of a Judgement.

1. There must be a final Judgment ;
2. The Judgement must be on the merits ;
3. The claims must be the same in the first and second suits;
4. The parties in the same as those in the first, or have been represented by a party to the prior action.

Section 11 does not affect the Jurisdiction of the court but “operates as a bar to the trial” of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigation under the same title in a court, then they are not competent. They become barred to try the subsequent suit in which such issue has been raised.

It was a fundamental concept based on public policy and private interest. It conceived in the larger public interest, which requires that every litigation must come to an end. An ordinary litigation being a party or claiming under a party of a former suit cannot avoid the applicability of section 11 of the C.P.C. as it is mandatory except on the ground of fraud or collusion as the case may be. The onus of proof lies on the party relying on the theory of Res Judicata. The provisions of section 11 are not discretionary but it was mandatory”. The Judgement in a former suit can be avoided only by taking recourse to section 44 of the Indian Evidence Act on the ground of fraud or collusion.

An administrative Government body may act through rulemaking, adjudication, or by enforcing a specific regulatory agenda. Administrative Law is that body of law which applies for hearings before quasi- judicial bodies, boards, commissions or administrative tribunal justice with their own detailed rules of procedure.

The two basic principles of administrative law are “ audi alteram partem” (no person shall be condemned, punished or have any property right deprived, unheard) and “ Nemo

Judex n parte sua” (no person can judge a case in which he or she is party or in which he/she has an interest).

In administrative law, the use of the doctrine is that, it administers as to how well the judiciary does its work. The parties can file another suit in another court, just to harass and malign the reputation of the opposite party or can do so for receiving compensation twice from the different courts.

A comparison of Res Judicata as a concept between Administrative Law and the other laws. In Administrative Law the doctrine works as a working principle and has been adopted or taken from code of civil procedure. Section 11 has a big role to be played in the civil court of India. Even in International Law which is applicable in the international Court of Justice, the too section 38(1)(oc) is dedicated towards the doctrine of Res Judicata.

The principles of Res Judicata also apply to the constitutional matters. The rule of Res Judicata is basically a rule of private law but has been transposed into the area of writ proceedings as well. A subsequent writ petition can not be moved against the judgment of a petition in a particular high court. The Judgment can be any nature and of any high court, but that order can not be in any Administrative Law and C.P.C, there are some few other laws which talk about the role of Res Judicata in the statute.

Under Res Judicata, a final judgment on the merits of an action precludes the parties from re- litigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first case. The basic point involved in the nature of doctrine tries to bring in natural and fair justice to the parties and that too by barring the other party to file a multiple number of suit either for justice or for harassing the other party.

Res judicata includes two related concepts: claim preclusion and issue preclusion, claimpreclusion focuses on barring a suit from being brought again on legal cause of action that has already been finally decided between the parties, sometimes Res Judicata is used

more narrowly to mean only claim preclusion. Issue preclusion bars the re-litigation of factual issues.

It is often difficult to determine which, if either, or those apply to later law suit that are seemingly related, because many causes of action can apply to the same factual situation and vice versa. Also the Res Judicata does not restrict the appeals process, which is considered a linear extension of the same law suit as it travels up the appellate court ladder.

In the case of *Satyadhyan Ghosal v. SMT. Deorajin Debi*, where the principle of Res Judicata is invoked in the case of the different stages of proceedings in the same suit the nature of the proceedings, the scope of the enquiry which the adjectivas law provides for the division being reached for the decision being reached as well as the specific provision made on matters touching such decisions are some of the factors to be considered before the principle is held to be applicable.

However, there are limited exceptions to Res Judicata that allow a party to attack the validity of the original judgement, even outside of appeals, this are based on procedural or jurisdictional issues. A collateral attack is more likely to be available in judicial system with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognise the judgment of a foreign court.

In the case of Rural litigation and Entitlement kendra vs. State of uttar pradesh, it was held that the writ petitions filed in the Supreme court are not inter party dispute and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area must be permitted or stopped. Even if it is aid that there was a final order, in a dispute of this type it would be difficult to entertain the plea of Res Judicata.

In forward construction Co. V. Prabhat Mandal, the Supreme Court was directly called upon to decide the question. The Apex court held that the principal would apply to public interest litigation provided it was a bona fide litigation.

Conclusion :

The doctrine of Res Judicata is something which restrains the either party to move the clock back during the pendency of the proceedings. This doctrine is applicable even outside the code of civil procedure and covers a lot of areas which are related to the society and people. The scope and the extend has widened with the passage of time and the Supreme Court has elongated the areas with its Judgements.