

INTERPLEADER SUIT – SECTION 88 AND ORDER XXXV OF CPC.**Author:- Nikhil Jaiswal¹****INTRODUCTION**

To interplead means to take legal action with each other to settle a point regarding a third party.

The Halsbury's Laws of England (Fourth Edition), Volume 37, Para 264 (at p.200) states that "Where a person is under liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of the debt or money or those goods or chattels, by two or more persons making adverse claims thereto, he may apply to the court for relief by way of interpleader."

Interpleader is civil procedure that allows a plaintiff or a defendant to commence a lawsuit in order to require two or more other parties to litigate a dispute. An interpleader action originates when the plaintiff holds property on another's behalf or is in the possession of the property, but does not know to whom the property should be transferred. It is often used to determine disputes arising under insurance contracts.

In other words, Inter-pleader suit is a suit initiated by a person who has no express interest in the subject-matter of the suit. In other words if the plaintiff holds some article, things or property (in which he is not having direct interest or he may be a warden or stake holder) and if he is in a dilemma over the clashing claims of the defendants, he may file inter-pleader suit in the competent court to have determination as to who is the actual owner of the article, things or property.²

It is a suit where there must be more than one defendants and the defendants contest against each other for the property dispute. In an interpleader suit the plaintiff holds the movable or immovable property and files the suit only to discover as to whom he should convey the property

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² Interpleader Suits – Section 88 read with Order XXXV of the Code of Civil Procedure, 1908: Analysis, <https://tilakmarg.com/opinion/interpleader-suits-section-88-read-with-order-xxxv-of-the-code-of-civil-procedure-1908-analysis/>

because the defendants raise their claims on the property against each other or they interplead against each other. In every interpleader suit, there must be some debt or sum of money or other property in dispute between the defendants only. And the plaintiff must be a person who claims no interest therein other than for charges or costs and who is ready to pay or deliver the property to such of the defendants as may be decided by the court to be entitled to the property.³

In an interpleader action, the party who brings the matter before the court or who starts the litigation, normally the plaintiff, is termed the stakeholder. The money or debt or other property in controversy is called the res. All defendants having a possible direct interest in the subject matter of the case are called claimants. In some jurisdictions, the plaintiff is termed as the plaintiff-in-interpleader and each claimant as claimant-in-interpleader.⁴

LAW PROVIDING FOR INTERPLEADER SUIT

Section 88 of the Code of Civil Procedure 1908 provides that, ‘Where interpleader suit may be instituted.- Where two or more persons claim adversely to one another the same debt, sum of money or other property, which maybe movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants with the aim of obtaining a decision as to determine the person to whom the payment or delivery shall be made and of obtaining indemnity for himself.’

So, it put forward certain conditions to file an interpleader suit, which are-

- Must be some same debt, sum of money or other property, movable or immovable,
- Two or more persons claim adversely to one another,
- Person from whom the property is claimed, must claims no interest other than for charges or costs and who is ready to pay or deliver it to the rightful claimant,
- Person, from whom the property is claimed, may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself.

³ Order XXXV Rule 1, The Code of Civil Procedure 1908

⁴ <https://en.wikipedia.org/wiki/Interpleader>

In the case of, *Asan v. Saroda*⁵, the hon'ble Calcutta High Court held that, the suit is not interpleader where defendants do not claim adversely to each other, nor does the plaintiff admit the title of one of the defendant or is willing to pay or deliver the property to him.

Proviso to section 88 further says that, Provided that where any suit is pending in which the rights of all parties can properly be determined, no such suit of interpleader shall be instituted. Further the Order XXXV provides for interpleader suit.

Rule 1 provides for plaint in interpleader suit where in every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, include (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs incurred in litigation; (b) the claims raised by the defendants severally; and (c) that there is no collusion between the plaintiff and any of the defendants.

*Mangal Bhikaji Nagpase vs State Of Maharashtra*⁶, the hon'ble Bombay high court held that in the respect of Rule 1, the court mandatorily requires the plaintiff to affirm that he claims no interest in the subject matter in dispute other than for charges or costs.

Rule 2 provides for payment of thing claimed into court, where the thing claimed is capable of being paid into court or placed in the custody of the court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

In the case of *Syed Shamsul Haque v. Sitaram Singh & Ors*⁷, the hon'ble Patna high court held that the court has discretion to make such orders as regards the subject matter in dispute and the party concerned will have to obey the order before it can ask for any relief in the suit from the court.

Rule 3 provides for where any of the defendants in an interpleader suit is actually suing the plaintiff in respect the subject-matter of such suit, the court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be

⁵ AIR 1922 Cal 138.

⁶ (1997) 99 BOMLR 91

⁷ AIR 1978 Pat. 151

provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

In the case of *Satyanarain v. District Judge, Tonk & Ors* it was held that it is not as if that once the suit for interpleader is filed the other suit stays automatically; in order to invoke the power under Order XXXV, Rule 3 of the Code of Civil Procedure, 1908 the plaintiff (or interpleader) is duty bound to prove a prima facie case in his favor.

Rule 4 provides for procedure at first hearing, that is the court may declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit. Upon the findings of the Court the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed. Where the admissions of the parties do not enable the Court so to adjudicate, it may direct that an issue or issues between the parties be framed and tried, and that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff.

Rule 5 provides that the agents and tenants cannot initiate interpleader suits against principal and landlords. According to it, nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of forcing them to interplead with any persons other than persons making claim through such principals or landlords. The illustration provided in the bare act is, A deposits a box of jewelry with B who acts as his agent. C alleges that the jewels were obtained by illegal means from him by A, and claims them from B. B cannot initiate an interpleader-suit against A and C. Here B being an agent of A is not in a position to institute an interpleader suit according to the rule 5.

In the case of *N.M.N. Duraiswami Chettiar v. Dindigul Urban Co-operative Bank Ltd*, it was held that on a issue as to the ownership of the deposit arising between the customers and the third person, an interpleader suit filed by the bank would not be barred or prohibited by the Order XXXV, Rule 5 of the Code of Civil Procedure, 1908.

Rule 6 is the last rule under the Order XXXV which provides for charge of plaintiff's costs, it states that, where the suit is properly instituted the Court may provide for the costs of the

original plaintiff by giving him a charge on the thing claimed or in some other effectual way as the court finds right.

The court will decide if a suit is an interpleader suit by deliberating on the prayers in the plaint. In the case of *Jagganath v. Tulka Hera*⁸, the hon'ble Bombay high court held that a suit does not become an interpleader suit merely because the plaintiff requires the defendants to interplead with each other as regards one of the prayers in the plaint.

INTERPLEADER SUIT IN THE UNITED STATES OF AMERICA

Earlier a plaintiff had to deny any claim to the res in order to avail himself of the interpleader remedy, but this requirement was relaxed or abolished in most jurisdictions by the USA Supreme Court. A plaintiff may now argue that neither of the claimants has a right to the property at issue. For example, a person 'A' dies with a life insurance policy that excludes coverage for suicide. Two people came in light claiming to be the beneficiary named in the policy by A. The insurance company believes the cause of death to be suicide, but the claimants believe the cause of death due to an accident. The insurance company could interplead the two claimants and simultaneously deny the claims.

The United States federal courts, there are two specific types of interpleader actions. Statutory Interpleader governed by 28 U.S.C. and 1335 which allows an individual with a stake which is, or may be, claimed by two or more adverse claimants, to interplead those claimants and bring them into a singular action. Title 28 (Judiciary and Judicial Procedure) is the portion of the United States Code (federal statutory law) that governs the federal judicial system and U.S. Code 1335 provides for interpleader suit according to which The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of \$500 or more.

⁸ ILR (1908) 32 Bom

Rule Interpleader established by Federal Rules of Civil Procedure which provides for provides a remedy for any person who is, or may be exposed to double or multiple liabilities.

If we compare the interpleader suits in the USA with the Indian laws, following points of differentiation emerge:

- The Indian law under section 88 or Order XXXV do not specify the quantum of the property against the title of which an interpleader suit can brought. While the US Code 1335 provides that ‘money or property of the value of \$500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of \$500 or more’, it sets a lower limit to bring an interpleader suit.
- There are no types of Interpleader suit in the Indian Laws, while the USA laws provide for two types of interpleader suit i.e. Statutory and Rule Interpleader.
- Moreover, the USA legislation had passed The Federal Interpleader Act in the year of 1917, while India on the other side does not have any such law.

JUDICIAL RESPONSE ON THE INTERPLEADER SUITS

- **Neeraj Sharma vs The District Sangpur Khadi Gram**

In this case, the hon’ble Punjab and Haryana High Court held that According to the Rule 5 provides that the agents and tenants cannot institute interpleader suits against principal and landlords. A tenant cannot sue his landlord for compelling him to **interplead** with any persons other than persons making claim through such landlord. If the other person is claiming the property through the previous landlord and then asking for the rent from the tenant, then to settle such different claims by two or more persons, the tenant can file **interpleadersuit**, but if the other person is claiming the right and interest in the property independently without any reference to the previous landlord and claiming the rent from the tenant, then the **interpleader suit** filed by the tenant is not maintainable.

- **Hanumanth Vajhula Jagannadha v. Vajhula Annapurna Rajeswaramma**

Questions as to excess execution where property not included in or covered by the decree is delivered in execution of the decree, there arises a situation which, in law is called 'action in excess of the decree'. In such cases the proper remedy for the judgment debtor to recover the property delivered in excess of the decree is by an application under Section 47 of Code of Civil Procedure and not by a separate suit.

- **Ashok Leyland v. State of Tamil Nadu**

The Hon'ble Supreme Court in this case settled the legal matter that no interpleader suit could be legally entertained by the trial court for the purposes of determination of title of the parties under Order XXXV, Rule 5 and in case the judgment and decree passed in the interpleader suit is held to be a decision with regard to the title claimed by the parties over the property in question, the suit itself would be without jurisdiction. Even if the trial court has held that it has jurisdiction to decide such an interpleader suit, the said finding would not be said to be res judicata inasmuch as wrong decision on the jurisdictional issue would not attract the principles of res judicata.

CONCLUSION

The law enshrined under the Section 88 and Order XXXV stands to be one of the most important civil laws. This provision is intended to protect person with a bona fide intent from future condemn that he did not discharge his obligation or in other words it safeguards a person right to costs of litigation who claims no interest in property or who is the plaintiff and to determine the correct claim over the property or debt. If no such right is protected or overlooked by the courts an appeal can be filed before the appellate court under Order XLIII, Rule 1 of the Code of Civil Procedure, 1908.

JUS IMPERATOR