

PAPER BOOK

*DISTRICT COURT GONDIA*

LEGAL WORKSHOP

DATE :- 10.01.2015

**Subject**

- “Civil – Principle of Resjudicata & Estoppel.”  
“Criminal – The Pre-conception and Pre-natal  
Diagnostic Techniques (Prohibition of  
Sex Selection) Act- 1994”

## Summary

### WORKSHOP OF THE JUDICIAL OFFICERS AT GONDIA 2014-2015

Topic of Paper : Principles of Res-Judicata and Estoppel

“Res judicata pro veritate accipitur” (a thing adjudged must be taken as truth) is the full maxim which has, over the years, shrunk to mere “res judicata”. (Vide: Kunjan Nair Sivaraman Nair v. Narayanan Nair (2004) 3 SCC 277). Res judicata is a branch of English doctrine of estoppel. *In latin language “Res Judicata” means “a thing decided”*. Principle of *Res Judicata* is based on the need of giving a finality to the judicial decisions. What it says is that once a res judicata, it shall not be adjudged again.

2] The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence “interest reipublicae ut sit finis litium ” (it concerns the State that there be an end to law suits) and partly on the maxim “nemo debet bis vexari pro uno et eadem causa ” (no man should be vexed twice over for the same cause). (See:**Dr. Subramanian Swamy v. State of Tamil Nadu & Ors 2014 (1) SCALE 79**).

3] Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a

future suit or proceeding between the same parties to canvas the matter again.

4] The doctrine of *res judicata* is based upon two Roman maxims “ ***nemo debet bis vexari pro-una et eadem causa***” i.e. “ no man should be vexed twice over the same cause” of action, and “ ***interest reipublicae ut sit finis litium*** ” i.e. it is in the interest of the state that there should be an end to litigation. The first maxim looks to the interest of the litigant, who should be protected from a vexatious multiplicity of suits, because otherwise a man possessed of wealth and capacity to fight may harass his opponent by constant dread of litigation. The rule is intended not only to prevent a new decision but also to prevent a new investigation so that the same person may not be harassed again and again in various proceedings upon the same question. The second maxim is based on ground of public policy that there should be an end to litigation. Judicial decisions must be accepted as correct or otherwise if suits were allowed to be filed endlessly for the same cause of action there would be no end to this vexatious litigation and the Courts will be unable to deal with an overgrowing number of suits.

5] The essentials for the applicability of the general principles of *res judicata* are laid down in the English case of the “Duchess of Kingston” and also under section 11 of Code of Civil Procedure in India which can be summarised as under:

A] ***The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.***

To constitute res judicata it is necessary that the matter must have been directly and substantially in issue in a former suit. 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, either expressly or by necessary implication by the other. If it was not directly and substantially in issue in a former suit it will not operate by way of res judicata in a subsequent suit. The question whether a matter has been directly and substantially in issue in a former suit is one of facts to be decided with reference to the circumstances of each particular case.

**B] *The former suit must have been between the same parties or /between the parties under whom they or any of them claim.***

“ Res-inter alios act a alios act a alteri nocere non-debet” – Things done between strangers ought not to injure a party, or “Res-inter alios judicata nxullem inter alios predicum facit” –Matters decided between third parties do not affect strangers or any but themselves. An adjudication is binding upon the parties to a suit or persons claiming under on represented by them but upon those only.

**C] *Such parties must have been litigating under the same title in the former suit.***

It means that question must have been raised and decided in the same right that is to say in the right of the parties to the second and not in the right of any other person. A suit by a person representing the public is not barred by a decision in a previous (Suit) by the same plaintiff in their individual and private capacity.

**D] *The Court trying the former suit must have been a Court competent to try such subsequent suit or the suit in which such issue is subsequently raised.***

**E] *Such matter in issue in the subsequent suit must have been heard and finally decided in the suit.***

6] The section 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 litigating under the same title in a court, competent to try the subsequent suit in which such issue has been raised. In **Smt. Raj Lakshmi Dasi & Ors. v. Banamali Sen & Ors.** , AIR **1953 SC 33**, the apex Court while dealing with the doctrine of res judicata referred to and relied upon the judgment in *Sheoparsan Singh v. Ramnandan Singh* , AIR 1916 PC 78 wherein it had been observed as under:

“..... the rule of res judicata, while founded on ancient precedents, is dictated by a wisdom which is for all time..... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus:

'If a person though defeated at law, sue again, he should be answered, "you were defeated formerly". This is called the plea of former judgment.'...

And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law”

7]           The apex Court in *Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr.*, AIR 1960 SC 941 explained the scope of principle of *res-judicata* observing as under:

“7. The principle of *res judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res* is *judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of *res judicata* is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of *res judicata* has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”

### **Res judicata and precedent–Difference**

8]           There is a distinction between *res judicata* and a precedent established by Court. When a Court interpretes the law, when it construes a statute or determines what the position in law is with regard to a particular matter, that constitutes a precedent set up by that Court and that Court may well follow that precedent when similar cases come before it where the same law has to be considered and interpreted. But a decision given by a Court on a question of law does not bind the same

parties when those parties are litigating with regard to an entirely different right. The decision of law would only be binding between the same parties as *res judicata* if the right that a party claimed was the same in the former suit and in the later suit. If certain facts were determined on an interpretation of the law and it was held that a party had a certain right or that he was not entitled to a particular right, then it would not be open to that he was party in a subsequent suit to challenge the interpretation of the law and ask the Court to decide that he had the right nor would it be open to the other party to allege that he did not have the right.

9] A previous judgment works as an estoppel not only with reference to the conclusion arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. “ When we say ‘ every step in the reasoning’ we mean the findings on the essential facts on which the judgment or ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment”. A finding can operate as *res judicata* only if it results in a particular decree or order. It is not *res judicata* if the decree or order is passed in spite of a finding, as where a finding is recorded against a party who succeeds, or in favor of a party who fails on other issues. Where a decision rested on two or more findings all the findings do not necessarily operate as *res judicata*. Where the suit is dismissed on a technical ground, findings recorded on the merits would normally be obiter dicta

similarly, if the Court has itself based the decision on one or some of the findings recorded by it, or if its decision can fairly be attributed to that finding or those findings only the other findings would not operate as *res judicata*. In cases where the decision is based on and is attributable to several findings all those findings would have the force of *res judicata*.

### **ESTOPPEL**

10] Section 115,116,117 of Indian Evidence Act 1872 lays down the principle of “Estoppel”.When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Estoppel properly so called is of three kinds, namely:-

- (i) Estoppel by matter of record or quasi-record; (Res judicata)
- (ii) Estoppel by deed, Section 43, T.P. Act; and
- (iii) Estoppel in pais i.e. Estoppel by conduct Section 115,Evidence Act.

11] It is well settled law that the principle of *res judicata* is a species of the principle of estoppel. When a proceeding based on a particular cause of action has attained finality, the principle of *res judicata* shall fully apply. Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the

latter having been litigated between the same parties or their privies and having involved the same subject-matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. Issue of estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. Here also the bar is complete to re-litigation but its operation can be thwarted under certain circumstances. The underlying principles upon which estoppel is based, public policy and justice have greater force in cause of action estoppel, the subject matter of the two proceedings being identical, than they do in issue estoppel, where the subject matter is different. Once it is accepted that different considerations apply to issue estoppel, it is hard to perceive any logical distinction between a point which was previously raised and decided and one which might have been but was not.

### **Distinction Between “ Estoppel” And “Res judicata”-**

- The doctrine of *res judicata* is a part of procedure and it is meant to put an end to a particular litigation, while estoppel is part of the law of evidence and is based upon equitable principle.
- *Res judicata* stops a court from adjudicating into a matter already decided while estoppel prohibits a party to a litigation, from saying anything to the

contrary of his previous declaration.

- Estoppel results from the conduct of parties while *res judicata* is creation of court.
- *Res judicata* ousts the jurisdiction of a court, on the other hand estoppel only stops a party from saying something.

### **Kinds of estoppel**

#### A] Estoppel of tenant; and of licensee of person in possession:-

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

#### B] Estoppel of acceptor of bill of exchange, bailee or licensee:-

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced authority to make such bailment or grant such license.

**Explanation 1** :- The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

**Explanation 2** :- If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

C] Estoppel of record or quasi record :-

Estoppel of record or quasi record arises:—

(i) Where an issue of fact has been judicially determined in a final manner between the parties by a Tribunal having jurisdiction, concurrent or exclusive in the matter, and the same issue comes directly in question in subsequent proceedings between the same parties;

(ii) Where the first determination was by a court having exclusive jurisdiction, and the same issue comes incidentally in question in subsequent proceedings between the same parties;

(iii) In some cases where an issue of fact affecting the status of a person or a thing has been necessarily determined in final manner as a substantive part of a judgment in rem of tribunal having jurisdiction to determine that status, and the same issue comes directly in question in subsequent civil proceeding between any party whatever.

Where the earlier decision is that of a court of record, the resulting estoppel is said to be “of record” ; where it is of any other tribunal, whether constituted by agreement of parties or otherwise, the estoppel is said to be of “quasi of record”.

D] Estoppel by record :-

Estoppel by record is enacted by a final judgment. A party relying on estoppel by record should be able to show that the matter has been determined by a judgment in its nature final. The word final is used as opposed to “interlocutory”. A judgment which purports finally to

determine rights is nonetheless effective for the purpose of creating an estoppel because it is liable to be reversed in appeal.

Estoppel by record in the name of *res judicata* has been dealt with in Civil Procedure Code. Sections 40 to 43 of Evidence Act provide for the admissibilities of previous judgments. As stated above there are two types of judgments: (1) judgments in rem, and (2) judgments in personam. A judgment in rem may be defined as a judgment of a court of competent jurisdiction determining the status of a person or a thing; the judgment of a court of probate establishing a will or creating the status of an administration, or a divorce court dissolving or establishing a marriage are examples of judgments in rem. A judgment in rem is binding on all the persons whether they are party to the proceeding or not. A compromise decree does not amount to *res judicata* but it creates an estoppel by conduct.

### **Exceptions to Res Judicata.**

In **Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar (2008) 9 SCC 54**, the Supreme Court laid down 3 exceptions to the rule of Res Judicata

- (i) When judgment is passed without jurisdiction
- (ii) When matter involves a pure question of law.
- (iii) When judgment has been obtained by committing fraud on the Court.

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