

Presentation on Section 10, Code of Civil Procedure(*Res Subjudice*)

Presentation By:

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Topics to be covered

- Definition, object and essential ingredients of Section 10, C.P.C.
- Test for applicability of Section 10, C.P.C.
- Common issues faced.
- Section 10, C.P.C. alternative.

Definition of Section 10, C.P.C.

Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

Object

- The object underlying Section 10, C.P.C or *Res Subjudice*, which translates to “**Matter Pending**” is to prevent the Courts of Concurrent jurisdiction from simultaneously trying two suits in respect of the same matter in issue.
- The application of Section 10, C.P.C. in appropriate cases would help avoid recording of Conflicting findings on issues which are “Directly and Substantially in issue” in the previously instituted suit.

Held in *National Institute of Mental Health v. C. Parameshwara*, (2005)2 SCC 256




Essential Ingredients



No Court “shall” proceed

- The Court in which the subsequent suit is filed is precluded from proceeding with the trial of the subsequent suit.
- The Institution of the Subsequent suit is not barred, only the trial of the suit is barred under Section 10, C.P.C.
- The use of the word “Shall” makes the application of the Section 10, C.P.C. Mandatory and not Discretionary, if the conditions of Section 10, C.P.C. are fulfilled
 - Held in *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333 (Double Bench)

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- In case a Decree is passed in Contravention of Section 10, C.P.C., it would not be a nullity as the section enacts a rule of procedure

– Held in *Pukhraj D. Jain v. G. Gopalakrishna*,
(2004) 7 SCC 251 (Double Bench)


With the Trial of any suit

- Trial in a suit begins after the framing of issues and upto the conclusion of the suit.
- Since appeal is a continuation of a suit, Section 10, C.P.C. would apply in staying the trial of a subsequently instituted suit, pending the first or second appeal from the previously instituted suit.
 - The application for stay in such a case would lie in the Court in which the Subsequently instituted suit is instituted

– Held in *Ambica V. Sumitra AIR 1990 Ori*
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Matter in issue is also directly and substantially in issue in a previously instituted suit

- The matter in issue in the previously instituted suit should be directly and substantially in issue in the subsequently issued suit.
- This would mean that **The entire subject matter of the two suits must be same. The commonality of a few matters in issue is not sufficient.**
 - Held in *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333 (Double Bench)

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- A simple test to ascertain whether the Matter In Issue is directly and substantially in issue in a previously instituted suit is to check if the decision given in the previously instituted suit would act as *Res Judicata* in the subsequently instituted suit.
 - Held in *National Institute of Mental Health v. C. Parameshwara*, (2005)2 SCC 256

- An example:
 - A Suit is filed for partition,
 - **A1 Versus B1, B2, B3** on the basis of succession. In this suit B2 claims ownership by will in his favour by their late father.
 - A subsequent suit is filed for Declaration of title,
 - **B2 Versus A1, B1, B3** on the basis of a will by their late father in favour of B2.
- This would be an apt situation wherein the trial of the subsequent suit must be stayed under Section 10. C.P.C. as the entire matter in issue in both the suits is same and the decision in the first suit, after considering the issue of succession and will in favour of B2, would act as *Res Judicata* in the Subsequent suit for Declaration by B2.

- The matter in issue in both the suits must not be incidentally or collaterally in issue.
 - An example:
 - A suit was filed for recovery of money,
 - **A Versus B**
 - During suit pendency A dies. He has Four sons A1, A2, A3 and A4.
 - A1, A2 and A3 file an application for Substitution Under Order 22 C.P.C
 - A4 files a seperate application under Order 22,C.P.C. praying that only he may be substituted as L.R. of A. The reason given is the execution of a will by A in Favour of A4. This application is pending disposal.

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- Now a suit is filed for Declaration on basis of will,
 - **A4 Versus A1, A2 and A3**
 - **An application is filed by A3 under Section 10. C.P.C. on the basis of application moved by A4 under Order 22. C.P.C. in the previous suit.**
- The provisions of Section 10. C.P.C. would not apply in this situation as the issue of Adjudication of will has to be done for the limited purpose of deciding application under Order 22, C.P.C. and not in regards to the merits of the case for money recovery. i.e. incidentally.
- Moreover, no trial will be conducted for the issue whether A4 is the owner of the suit property of his late father by virtue of the will executed in his favour or whether all sons have right in the property of their late father based on inheritance by succession in the previous suit for recovery of money.

Between the same parties, or between parties under whom they or any of them claim litigating under the same title

- The parties in the previously instituted suit and the subsequently suit must be the same. Or
- Between the parties, who have derived title by virtue of Order 22 C.P.C., or by virtue of sale by one of the parties of the previously instituted suit to a non suited party, who becomes a party in the subsequent suit.

Where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed

- The Court in which the Previous suit has been instituted should be competent to grant the relief claimed in regards to the **Subject Matter** of the Subsequently instituted Suit.
- An Example:
 - A Suit was filed for Eviction of Tenant under the Provincial Small Cause Courts Act, 1887.

- **A Versus B**

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- A subsequent Regular Original Civil Suit was filed for the relief of perpetual injunction by the tenant against the landlord.


– **B Versus A**

- Since the S.C.C. Court cannot Grant the relief of perpetual injunction claimed in the subsequent suit, therefore, the subsequent suit cannot be stayed under Section 10, C.P.C.
- The power to grant relief should not be confused with the pecuniary jurisdiction of the Court. It is in regards to the **Subject Matter Jurisdiction** of the Court.

Tests for determining the applicability of Section 10, C.P.C.

- The First Test is to Check if the decision given in the previously instituted suit would act as *Res Judicata* in the subsequently instituted suit.
 - Held in *National Institute of Mental Health v. C. Parameshwara*, (2005)2 SCC 256

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- The second test is to see if both the suits are decreed, can the decree passed in both the suits co-exist.
 - It was held in *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333
 - “*This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.*”


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- Another test would be to find out of the plaint in one such suit would be the written statement in the other suit or not.
 - Held in *Raja Ram Estate v. Smt. Niharmoni*, 2006(1) CLJ (Cal) 653



Common issues faced




- **In which Court would the application under Section 10 lie?**
 - In the Court in which the Subsequent suit has been issued.
- **Whether an appeal from the judgement in subsequently suit can be stayed during the pendency of the previously instituted suit?**
 - Since the issue of Section 10, C.P.C. was not raised in the subsequent suit during trial by the Court of first instance, therefore, the said right is waived and the appeal cannot be stayed
 - Held in *Munilal V. Saravjeet AIR 1984 Raj 22.*



- **Whether Interlocutory orders can be passed in subsequent suit stayed under Section 10, C.P.C.?**

- **Yes.** An interlocutory order may be passed in subsequent suit stayed under Section C.P.C. **An Order for temporary injunction, appointment of receiver, commission can be passed in the subsequently stayed suit.**

- Held in *Indian Bank vs Maharashtra State Co-Operative marketing Federation Ltd.*, (1998) 5 SCC 69

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- **Whether Section 10 C.P.C. is applicable when one suit is filed in Civil Court and another suit is filed in another forum(Revenue Court, Consolidation Court, Tribunals)?**

- An application under Section 10 C.P.C. is **not maintainable** in such situations. The language used in Section 10, C.P.C. is used in reference to suits instituted in Civil Court only and it cannot apply to proceedings of other nature instituted under any other statute

- Held in *National Institute of Mental Health v. C. Parameshwara*, (2005)2 SCC 256

- **Whether additional party in one suit would make Section 10, C.P.C. inapplicable?**
 - An additional party in one of the suits would not make Section 10, C.P.C. provision inapplicable in certain cases, if the rest of the criteria of Section 10, C.P.C. is met. i.e. the matter in issue in previous suit is directly and substantially in issue in the subsequent suit and decision in previous suit would act as *Res Judicata* in subsequent suit.
 - The same has been held by Hon'ble Calcutta High Court in *Raja Ram Estate v. Smt. Niharmoni, 2006(1) CLJ (Cal) 653*
 - An example would be:
 - A suit for partition is filed, **A Versus B and C on the basis of a succession, but a fourth brother D is not made party in this Suit.**
 - **B also contests the suit on basis of will in his favour.**

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- Thereafter, a suit is filed for declaration of title on the basis of a will, **B Versus A, C and D.**
- Now, if A files an application under Section 10, C.P.C. to stay the subsequent suit, then it will be allowed as the matter in issue in both the suits is the same and the decision in one suit would apply as res judicata in the other suit.
- Here, the application of A, who is the plaintiff of the previously instituted suit, can be conditionally allowed to implead D as a defendant in the previously instituted suit or the option may be left open for D to file an application for impleadment in the previously instituted suit or the Court may suo moto implead D in the previously instituted suit.

- **Whether A court can partially Stay a suit?**

- In appropriate cases, Yes.

- Held in *S.K. Rungta V. Nawal Kishore*, AIR 1964 Cal 373

Alternative to Section 10, C.P.C.

- In a situation where an application has been moved under Section 10, C.P.C. in the suit subsequently instituted, an alternative available to the Court is to Consolidate both the suits under Order IV-A, C.P.C.(Applicable in Uttarakhand)
- Order IV-A C.P.C. does not require a specific application from any party and it is the discretion of the Court to Consolidate both the suits for joint trial, if its expedient in the interest of justice.
- The only limitation is that the previous suit and the subsequent suit should be pending in the same Court.
- Order IV-A, C.P.C. would not apply if the suits are pending in two different Court or in the same Court exercising two different jurisdictions.

Thank You.