

LAW SCHOOL NOTES

SUBJECT TITLE:

INSTITUTION OF SUIT

PROCEDURAL GUIDELINES



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Suits.

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- (F) Placing of Suit (S. 15-20) - Territorial Jurisdiction, Cause of Action & Jurisdictional Base
- (G) Summons [S. 27, 28, 31 & O. IV, VI, X]
- (H) Service of foreign Summons (Sec. 29)
- (I) Power of Order (Sec. 30 Order XI)

(S) Parties to Suit [Order I]

- i) Joinder of Plaintiffs (Rule 1)
- Separate Trial (Rule 2)
- ii) Joinder of Defendants (Rule 3)
- Separate Trial (Rule 3A)

* Who may be joined as P/D.

— All persons may be joined in one suit where

(a) any right to relief in respect of same act or transaction is alleged to exist against such person jointly, severally or in the alternative.

(b) if separate suit brought, any common question of law would arise

* Power of Court order separate trial

→ where joinder of such P/D may embarrass or delay the trial

Rule 6 :- If several person joined together as
1) plaintiffs in a suit, but it is found that only some of them are entitled to the relief claimed, a judgment may be given in favour of such person only w/o amendment of proceedings.

Rule 7 :- Plaintiff in doubt from whom redress is to be sought.

- he may join two or more defⁿ in order that the question as to which of the defendants is liable

Rule 8 :- Representative suit

* Generally all person interested in a suit ought to be joined as parties to it, but exception to this

- When numerous person are similarly interested in a suit one or more of them with permission of court, sue or ^{be}sued on behalf of themselves

- or court may direct such above process

Two ways

① Permission ② Discretion

- ~~Residence~~ Notice of Institution of suit

- be given through public advertisement or personal service

- at expense of plaintiff

- The court must give notice before any part of the claim in any such suit is abandoned or before such a suit is withdrawn or before any agreement or compromise recorded

(5) - If such person is not diligent, court may substitute it with interested person.

(6) - Binding on all parties.

* Essentials of Representative Suit

- 1) Parties must be numerous.
- 2) They must have same interest in suit.
- 3) Permission or direction must be given by court.
- 4) Notice be given to interested proposed to represent in suit.

Rules Misjoinder & Non-joinder

a) Non-joinder - a person who is necc. or proper party to a suit has not been joined as a party to the suit.

b) Mis-joinder - If 2 or more persons are joined as P/O in one suit contrary to Order 1 Rule 1 & 3 and they are neither necc. nor prop. party.

⇒ Suit cannot be dismissed only on this ground

→ doesn't apply in case of non-joinder of necc. party

Rule 13 Objection as to non-joinder or misjoinder of parties

- must be taken at the earliest opportunity
- in case where issues are settled, unless ground of objection has subsequently arisen
- If objectⁿ not take deemed to have been waived.

Order II
Frame of Suit

- a) Inclusion of whole claim (Rule 1 & 2)
- b) Joinder of Cause of Action (Rule 3) (Rule 4)
- c) Joinder of Claims (Rule 4, 5)
- d) Objection as to misjoinder

Rule 1 - as far as possible all matters in dispute between the parties relating to the same cause of action should be disposed of in the same suit so as to prevent further litigation.

Rule 2 - Inclusion of whole claim

- It shall include whole claim plaintiff entitled to make
- may relinquish any claim to being the suit within jurisdiction of court

(1) - Once claim / suit / or part of claim is relinquished / omitted afterwards no suit can be brought.

Object :- Def. should not be vexed twice for same cause of action
→ Deva Ram v. Ishwar Chand (1995)

Naba Kumar v. Radhashyam AIR (1931) PC

- The object of O.2.R.2 is to prevent multiplicity of suits
- O.2.R.2 differs from res judicata
- This rule applies only when leave of the court is not obtained
- It can be obtained at any stage

Exception - Apply only to suits & not

- i) appeals
- ii) execution proceedings
- iii) arbitration proceedings
- iv) Art. 226 petition.

(b) Joinder of Cause of Action (Rule 3 & 6)

- Plaintiff may unite several cause of action in one suit against same defendant/s
- Jurisdiction of such suit depends on amount or value of aggregate subject matter.

Power of Court to order separate trial

Rule 6 If ~~court~~ it appears to court it may embrace or delay trial, it may order separate trial & make any order in interest of justice.

Rule 7 :- Objection as to misjoinder of Cause of Action.

- shall be taken at earliest possible opportunity.
- before settlement of issues
- if not taken deemed to be waived.

(c) Joinder of claims :-

Rule 4 - In a suit for recovery of immovable prop., a plaintiff not entitled to join any claim w/o leave of court except

- Claim of mesne profit & arrears of rent
- Claims for damages for breach of contract
- Claim in which relief sought is based on the same cause of action

Rule 5 :- Suit by or against Executor, Administrator or Heir.

It provides no claim against or by the aforesaid person in their representative capacity shall be joined with claims by or against them personally in same suit.

Exception - (i) execution proceedings (ii) appeals (iii) writs & other proceedings

"Institution of Suit"

Order IV Sec. 26

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Rule 1 - Suit to be commenced by Plaintiff

- in duplicate to court
 - Plaintiff shall comply with O. 6 & 7
- * Plaintiff - private memorial tendered to court in which cause of action is set forth
- exhibition of action in writing

* Steps in Presentation of filing of civil suit

- 1) Presentation of suit.
- 2) Entry in register of civil suit.
- 3) Scrutiny by stamp register.
- 4) Removal of objection.
- 5) Suit will be numbered.

Rule 2 - Register of suits

- Particulars of every suit be entered in it
- Entries shall be numbered in every year acc. to order in which the plaints are admitted.

X X X X

[Sec. 10] Doctrine of Res Sub-judice

(A) meaning

- a suit pending before competent court for determination of rights & liabilities of the parties.

(B) Essentials/Conditions

- i) Two suits - one previously & another subsequently instituted.
- ii) Both the suits b/w same parties or their representatives.
- iii) Issue in subsequent suit must be directly & substantially in issue with previous suit.
- iv) Parties litigating under the same title.
- v) Court where previously suit is instituted is competent to grant relief.

(C) Application [Indian Bank v. Maha. State Co-operative Marketing Fed Co.]

- It applies to trial of suit & also to appeals & revision.
- does not apply to Interim order, grant of injunction or stay, etc.

(D) Object

- To abrogate possibility of 2 contradictory verdict by one & same court.
- Prevents multiplicity of proceedings.

(E) Case Laws

i) National Inst. of Mental Health & Neuro Science v. C Purneshwara (2005)

- Lang. of s.10 is applicable to suit & not other proceedings.
- Lays down test for applicability of s.10. "Whether the decision in previously instituted suit would act as res judicata in subsequent suit?"

ii) Manohar Lal v. Sethi Hira Lal (1982) SC

- Sec. 10 do not become inapplicable on a court holding that previously instituted suit is vexatious.

iii) Puthay D Jain v. G Gopalakrishnan (2004) SC

- Decree passed in contravention of s.10 is not nullity and therefore cannot be disregarded in Execution proceeding.
- Hence, if the parties waives their right & expressly ask the court to proceed with subsequent suit, they cannot afterward challenge the validity of the proceeding.

Doctrine of Res Judicata [8.11]

(A) Meaning

- a matter adjudged / a matter already decided

(B) Nature & Scope

- based on consideration of public policy
- principle founded on justice, equity & good conscience
- It embodies rule of conclusiveness
- It operate as a bar to try same suit again
- Avoids vexatious litigation

(C) Maxims

- It is based on three maxims

- 1) No man should be vexed twice for same cause.
- 2) It is in the interest of the state that there should be an end to litigation
- 3) A judicial decision must be accepted as correct

(D) Conditions for applicability

- 1) Matter must be directly & substantially in issue in both suits.
- 2) Prior suit b/w same parties
- 3) Such parties litigated under same title
- 4) Court which determined earlier suit must be competent to try latter suit.
- 5) Question directly and substantially in issue in subsequent suit should have been heard and finally decided in earlier suit

* Does Res judicata apply to petition u/Art. 32 }

Daryao v. State of U.P. AIR (1961)

→ Rule of Res judicata applies to petition filed u/Art. 32 if petition filed by Petitioner u/A. 226 is dismissed by H.C. on merits

(V) Case Laws

① Satyendra Kumar v. Rajnath Dubey & Others (2016) S.C.

- It was held that if in the former suit an erroneous decision has been delivered on the pure question of law it will not operate as res judicata in subsequent suit.

② M/s Kaushik Coop. Building Society v. N. Parvathamma (2017) SC

- not confined to decision in suit
- also applies to other proceedings
- Underlying principle in Sec. 11 is a person cannot be vexed twice in respect of same matter.

③ Sheodan Singh v. Daryao Kurwar 1966 (SC)

- dismissal of suit in default will not act as bar under Sec. 11
- It cannot be said to be matter heard & finally decided on merit.

④ Munni Bibi v. Triloki Nath AIR (1931)

- An adjudication will operate as res judicata b/w co-defendants on following cond^{ns}
 - i). Conflict of interest b/w ^{co-}defendants
 - ii). It must be nec^y to decide that conflict in order to give rights
 - iii). Questⁿ b/w co-defendants must have been finally settled
 - iv). Co-defendants were nec^y or proper party in former suit.

Jurisdiction of Civil Court (extent of authority of court)

Subject-matter	Territorial	Pecuniary	Original & Appellate
Limited by statute	fixed by govt.		

Placing of Suing [s. 15 to 18]

Sec. 15 :- Every suit shall be instituted in the court of lowest grade

Sec. 16 - Suit shall be instituted in the court within whose local jurisdiction the prop. is situated subject to pecuniary & other limitations

- Recovery of immovable prop with or without profit of sale
- Suit for foreclosure, sale or mortgage.
- for partition of imm. prop.
- determination of any other right in imm. prop.
- Compensation for wrong to imm. prop.
- Recovery of moveable prop.

Sec. 17 :- Suit may be instituted in any court within the local limits of whose jurisdiction any portion of prop. is situate. (with pecuniary jurisdiction of such court)

Sec. 18 :- Any of those court may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect & thereupon proceed to entertain & dispose of any suit relating to prop.

* Cause of Action -

- a bundle of essential facts, necessary for plaintiff to prove before he can succeed [Ganesh Trading Co. v. Meji Ram (1978) SC]
 - It is the foundation of a suit, (on the basis of it, suit must be filed)
 - must be antecedent to the institution of suit
 - Essential of suit w/o it suit will be dejected
- Mayar (H.K.) Ltd v. M.V. Fortune Express (2006) SC
- Mere allegation in W.S. or appn for rejection of plaint would not lead to ejection of plaint. Court has to gather from averments made in the plaint where it discloses cause of action or not.

(G) *

Summons [S. 27-29, Order 5]

(A) Meaning

- > A document issued from the office of a court of Justice +
- > Calling upon the person to whom it is directed to attend before a judge or officer of a court
- > a call to appear before Mag.

(B) Essentials of Summons [O. 5 R. 1, 2]

- | | |
|--------------------------------|--------------------------|
| i) Signed by Presiding officer | iv) Date of Appearance |
| ii) Sealed with seal of court | v) Order to produce doc. |
| iii) accompanied by plaint | in his defense |

(C) Purpose of Summons

- | | |
|---|---------------------|
| i) for appearance of defendant | } S. 27 & O. 5 R. 1 |
| ii) To answer the claim | |
| iii) for settlement of issues (Rule 5) | |
| ↳ either settlement of issues or final disposal | |
| ↳ shall contain such direction | |
| iv) for final disposal (Rule 5) | |
| v) for production of any document (for defendant) (R. 7) | |
| ↳ in his possession & power upon which he relies. | |
| vi) On issue of summons for final disposal, defendant be directed to produce his witness (Rule 8) | |