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Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A CRITICAL STUDY ON APPLICABILITY OF RES JUDICATA IN EXECUTION PROCEEDINGS

AUTHORED BY - ISWARYA M & KIRTHICK RAJAN A.S

Bharat Institute of Law

ABSTRACT

RES JUDICATA means "a thing decided" in Latin. It is a standard law philosophy meant to bar re-litigation of cases between constant parties in Court. Once a final decision has been bimanual down during a case, resultant judges WHO area units are confronted with a suit that's just like or considerably constant because the earlier one can apply res judicata to preserve the result of the primary judgment. this can be to forestall injustice to the parties of a case purportedly finished, however maybe principally to avoid gratuitous waste of resources within the court system. res adjudicata doesn't simply forestall future judgments from contradicting earlier ones, however additionally prevents them from multiplying judgments, thus a prevailing litigant couldn't recover damages from the suspect doubly for constant injury(Silja 2016). Res judicata includes 2 connected concepts: claim prevention, and issue prevention (also known as collateral estoppel), although typically res judicata is employed a lot narrowly to mean solely claim prevention. Claim prevention focuses on expelling a suit from being brought once more on a legal explanation for action that has already been finally set between the parties. Issue prevention bars the re-litigation of factual problems that have already been essentially determined by a decide or jury as a part of associate degree earlier claim. It's usually troublesome to work out that, if either of those apply to later lawsuits that area units are apparently connected, because many causes of action can apply to constant factual situations and the other way around. The scope of associate degree earlier judgment is maybe the foremost troublesome question that judges should resolve in applying res judicata. The main aim of this research is to analyse people's knowledge on res judicata and executive petition and the applicability of res judicata in executive proceedings. The main objectives are, to analyse the res judicata in court proceedings, to analyse the importance of executive proceedings, to analyse the importance of applicability of res judicata in executive proceedings. Typically concluded that simply a part of a resultant case is affected, like one claim being stricken from a grievance, or one factual issue being off from reconsideration within the new trial.

KEYWORDS: Res Judicata, re litigation, Lawsuits, Claim Preclusion, Collateral Estoppel.

INTRODUCTION

Sec 11 Res judicata.— No Court shall strive any suit or issue during which the matter directly and well in issue has been directly and well in issue in a very former suit between an equivalent parties, or between parties beneath whom they or any of them claim, litigating beneath an equivalent title, in a very Court competent to undertake such succeeding suit or the suit during which such issue has been after raised, and has been detected and at last determined by such Court. Explanation VII indicates that the philosophy of res judicata as provided for by S. eleven applies to execution proceedings moreover. However, it's vital to notice that totally different petitions are also filed soliciting for different reliefs. whereas a civil arrest is also wanted one time, attachment of property, immovable or movable, is also wanted at varied times, since the suspect could acquire new property. Therefore, res judicata won't apply, as in every case the property is totally different. once a succeeding court fails to use res judicata and renders a contradictory finding on an equivalent claim or issue, if a 3rd court is sweet-faced with an equivalent case, it'll possible apply a "last in time" rule, giving impact solely to the later judgment, although the result came out otherwise the second time. This case isn't unprecedented, because it is often the responsibility of the parties to the suit to bring the sooner case to the judge's attention, and also the choice should decide however generally to use it, or whether or not to recognise it within the initial place . The aim is to check regarding the relevance of res judicata in execution proceedings.

OBJECTIVES

To analyse the res judicata in court proceedings.

To analyse the importance of executive proceedings.

To analyse the importance of applicability of res judicata in executive proceedings.

REVIEW OF LITERATURE

1. Cochin (Princely State). Chief Court, S. Govinda Menon, C. L. George · 1949. Containing Cases Decided by the Chief Court of Cochin Cochin (Princely State). ... In these circumstances it seems to me clear that there could be no question of even constructive res judicata. ... learned Judge in the above case to treat the second objection as competent is applicable to the case in hand where the facts are entirely different

When an objection to execution proceedings is dismissed under the proviso to Order XXI, rule 58 as being made after unnecessary delay.

2. Cochin (India: State). Chief Court, S. Govinda Menon, C. L. George · 1949. Res judicata Constructive res judicata - Applicable to execution proceedings - Party to be affected should have notice. It is well - settled that the principle of constructive res judicata should be very cautiously applied to execution proceedings.
3. The Madras Law Journal 1953. The Civil Procedure Code may be made to incorporate within itself a provision making it applicable to execution and other proceedings in a suit the general principle of res judicata to a limited extent and in the light of the decisions on the subject.
4. Vamana Vasudeva Chitale· 1957. Barred by the principle of constructive res judicata.176 The trend of the recent decisions of the Allahabad High Court is to the effect that an ... an express or implied decision over. ruling the objection or unless the prior execution proceeding had fructified in partial satisfaction of the ... Where objection to execution lure of judgment - debtor to appear on date is not taken and the application for executifixed.
5. CPC - JATINDRA KUMAR DAS · 2013. Applicability of res judicata in execution proceedings is a controversial Explanation VII expressly enacts that the provisions of Section 11 will apply to execution proceedings. Thus, the general principle of res judicata applies to execution cases. An execution case levied against a sub-lessee was dismissed on the ground.
6. ABA Journal, May 1966. The execution of an offer or preliminary contract is an evidence or recording of [the broker's service] in bringing together the buyer and the seller", the court ... The district council (the zoning board) refused to consider the 1961-1962 proceedings as res judicata, took notice of all changes in the vicinity of the tract since 1949 ... debatable" even if the mistake-change rule and res judicata were applicable.
7. The Supreme Court Journal - Volume 1 - Page 273 in 1962. In execution proceedings the question arose whether or not the decree awarded me some profits. The District Judge ... In 1879 the decree had not yet been executed and execution proceedings were pending. ... the judgment - debtor that the law of res judicata did not apply to proceeding in execution of a decree.
8. Alaska Statutes, 1962 - Volume 2 - Page 536, Alaska · 2000. A party to the execution proceeding has three remedies against a sale fraudulently obtained : (1) He may file

objections to the sale at the confirmation ; (2) he may appeal from the order of the confirmation ; (3) he may bring an action to set the ... Confirmation is not res judicata as to voidness or fraudulence of execution.

9. Digest of Central Acts and Constitutional Cases- 1968. The order disposing of the objection to the saleability of the property in question on the plea of res judicata, may well be considered to be similar to an order disallowing a plea of limitation. The rights of the parties to the execution proceedings still remain to be adjudicated upon and all that has been determined.
10. Kampala Law Reports: Decisions of the High Court and Supreme Court - 1995. As noted earlier, the appellant complained to the Deputy Registrar of the High Court about wrongful or irregular execution or excessive attachment. ... Coming back to the present application, I think that the learned Judge misdirected himself on the motion before him. ... The rule of res judicata deals with the finality of a decision of a Court on matters actually or constructively in issue before it and bars a fresh trial of any kind.
11. The Indian Law Reports: Containing Cases Determined by the High Court - 1972. The principle of res judicata applies to execution proceedings . The judgment - debtors in the present case did not raise aligned objection as to limitation in regard to execution.
12. Report of the Uttar Pradesh Judicial Reforms Committee Uttar Pradesh (India) Judicial Reforms Committee · 1950.
Res judicata A great deal of time is wasted in execution proceedings because in execution there is great divergence of opinion as to the application of the proceedings . principle of res judicata to such proceedings . Some High Courts have held that only when a point has been actually raised and decided.
13. The Indian Decisions (new Series).: Bombay - Volume 13 - Page 598 - 1914. The remaining objections depend on the rule of res judicata . It is contended that the lower Courts erred in rejecting as evidence the record of application No. 48 of 1885.

HYPOTHESIS:

Null hypothesis: There is no association between age and people's knowledge on res judicata and executive petition.

Alternative hypothesis: There is association between age and people's knowledge on res judicata and executive petition

RES JUDICATA

The principle of res judicata whereas supported on ancient precedent, is determined by a knowledge that is for all time. Res judicata could be a judicial creation with roots within the Latin phrase "Res judicata professional veritate accipitur a matter adjudged is taken for truth". res judicata is, in each civil law and customary law systems, a case during which there has been a final decision and is not any longer subject to appeal . The term is additionally wont to confer with the philosophy meant to bar re-litigation of such cases between an equivalent parties, that is totally different between the 2 legal systems. Once a final decision has been handed down in a very proceedings, succeeding judges World Health Organization area unit confronted with a suit that's a twin of or well an equivalent because the earlier one can apply the res judicata philosophy to preserve the impact of the primary judgment. The principle of res judicata isn't the creature of any statute or the handicraft of any code of law. it's the gift of public policy.

Applicability of res judicata - res judicata could be a principle of universal application. It applies to civil suits, criminal proceedings, legal document petitions, execution suits etc. This philosophy is but, neither applicable to outline dismissal nor to compromise and consent decrees. The philosophy of res judicata isn't confined to the boundaries prescribed in Section eleven, Civil Procedure Code . The underlying principle of that philosophy is that there ought to be definiteness in legal proceeding which someone shouldn't be vexed double over in respect of an equivalent matter. The sine qua non for the relevance is that the next suit or continuing is supported on an equivalent reason behind action on that the previous suit was supported. it's a debatable purpose whether or not the philosophy of res judicata ought to be taken munificently or strictly. However, keeping visible its basis and objective, that is predicated on public policy, it may be fairly declared that the philosophy of res judicata ought to be taken liberally(Lange 2004; Black 1902).

RES JUDICATA IN EXECUTION PROCEEDINGS

Section eleven within the Code of Civil Procedure, there have been conflicting views concerning application of Section eleven, Code of Civil Procedure, to the execution proceedings. it absolutely was commanded that Section eleven isn't thorough on the question of res judicata and its general principle applies to execution proceedings additionally. Where, therefore, a matter that directly and well, arises for call in associate degree execution

continuing, is detected and set by a competent Court, such a choice is final between the parties and operates as res judicata during a consequent execution continuing or at a consequent stage of identical execution proceeding(Valloni and composer 2010). associate degree specific judgment by the Court within the presence of parties, would mean that the question should be thought of to own been finally set, in spite of whether or not it's raised once more at consequent stage of identical continuing, or during a consequent execution-proceeding(Ethiopia 1965).The Law Commission suggested that the principle of res judicata ought to be applied to the things of proceedings in execution and freelance proceedings and instructed insertion of Section 11A . rather than inserting Section elevenA the Joint Committee of Parliament instructed insertion of clarification to Section 11 and on the idea of that report, Explanations VII and VIII are inserted by Code of Civil Procedure. (Amendment) Act, 1976. Section eleven of this Code excluding clarification VIII envisages that Judgment during a former suit would operate as res judicata if the Court that set the suit was competent to undertake identical by virtue of its monetary system jurisdiction and also the subject-matter to undertake the following suit intrinsically it's not necessary that the aforementioned Court ought to have had territorial jurisdiction to make a decision the following suit(Safiullina and JSC «Agency for Housing Mortgage Credit of the Republic of Tatarstan» 2017). clarification VII extra within the section Vide Act No. 104 of 1976 has created it clear that not solely general principle of res judicata however additionally constructive res judicata apply to execution proceedings. The provisions of the section ar currently applicable to a continuing for the execution of a decree, and references within the section to a suit, issue or former suit shall be construed as references severally to a continuing for the execution of a decree, question arising in such continuing and a former continuing for the execution of that decree . However, associate degree application by decree-holder to transfer sure papers to a different Court for any execution isn't an execution application and its dismissal doesn't bar a recent application (Parfiryev and Metropolis Branch of the Russian State University of Justice 2017). The philosophical system of res judicata has been applied to execution continues to a consequent stage of identical proceeding to special Acts like Debt Relief Acts and consolidation of holdings Acts, Displaced Persons (Compensation and Rehabilitation) Act , to Orders of remand and to awards underneath the Arbitration Act. it's settled law that the final principles of Section eleven of the Code of Civil Procedure apply to execution proceedings also. If basic issue in each the proceedings is completely different and Judgment human didn't raise objections within the earlier proceedings, it cannot debar him from raising the objection at the time of consequent proceedings on principle of actual or constructive res judicata. Where admitted position is that

the Civil Court ordained the suit for eviction against the Appellant holding that he wasn't a tenant that Order has become final(Sarkar, Sarkar, and Sarkar 2006). an identical plea of need of legal relationship is sought-after to be raised in execution. Having allowed it to become final it's not a receptive contender that he's still a tenant and thus, the decree is nonentity. The death penalty Court was right in refusing to entertain the objection for death penalty the decree (Thakker and Thakker 2014).Where in associate degree earlier execution proceedings a decree-holder may have raised a plea that the Judgment-debtor had associate degree interest in sure property that might be connected underneath his decree however the plea wasn't raised through his own default and also the execution was fired, the dismissal operates as res judicata within the consequent execution proceedings and even excluding the provisions of Section eleven, Code of Civil Procedure, it's contrary to the principle to permit the decree-holder in recent proceedings to renew identical claim just as a result of he neglected at a correct stage in previous proceedings to support his claim by the argument of that he afterwards needs to avail himself(Walsh and Gsovski 1951). associate degree objection on jurisdiction of death penalty Court raised and eventually set during a previous execution would be barred by res judicata in consequent execution regardless of whether or not the choice was inaccurate in law or not. The correctness or otherwise of a due process has no bearing upon the question whether or not or not it operates as res judicata. a choice within the previous execution case between the parties that the matter wasn't at intervals the competency of the death penalty Court, even if inaccurate is binding on the parties("Civil Procedure, Code of," n.d.).The dismissal for default of the Judgment-debtor of associate degree application filed by him underneath Section forty seven, Code of Civil Procedure resisting the execution of the decree isn't a final judgment of the Court once hearing the parties and thus, doesn't operate as res judicata and he will raise that objection during a consequent application filed by him. A Judgment-debtor isn't precluded by the principle of res judicata from raising the plea of limitation in associate degree execution unless (i) there was associate degree specific judgment on the question of limitation against a Judgment-debtor in associate degree earlier execution continuing or at associate degree earlier stage of identical execution proceeding; (ii) or if there was judgment implicit in associate degree Order that, soft on close circumstances, ought to be taken to imply a acutely aware determination of the question of limitation adversely Judgment-debtor; and (iii) if the Judgment- human failed to fail to require the plea of limitation once it would and got to are taken, and no relief prayed for within the execution application, was granted, nor a partial satisfaction of the decree was obtained by the decree-holder(H. M. A. and H. 1924). it absolutely was commanded that the choice given within the initial execution continuing on a

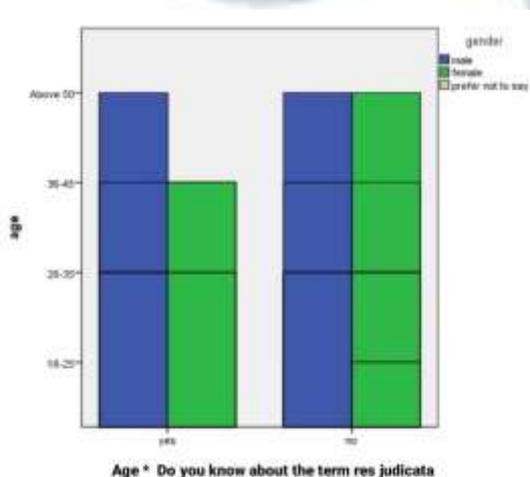
mixed question of law and reality, and not one amongst law solely, would operate as res judicata during a consequent execution continuing between identical parties.(Broughton 1871). The main aim of this research is to analyse people’s knowledge on res judicata and executive petition and the applicability of res judicata in executive proceedings.

MATERIALS AND METHODS

The present study is done through empirical research. The present paper used both primary and secondary sources. The primary data was collected by random sampling method where information was collected from 211 respondents through well structured questionnaires. The questionnaire throws light on various aspects of civil procedure code of which the paper deals crucially with the awareness of the public about the Res Judicata and executive petition. The secondary information was collected from journals, newspaper articles and case laws. The independent variables include the age and res judicata and executive petition. The study has used research tools such as frequency bar diagram, cross tabulation, Chi square test and percentage.

FINDINGS:

Graph 1



Legend:

From the graph, it is observed that it exhibits the age distribution of the respondents among different gender of the respondents and their opinion on that term res judicata.

Results:

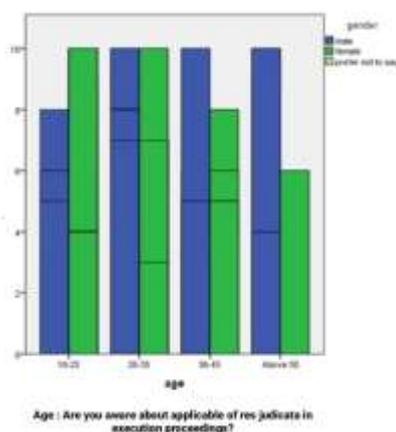
From the survey: in graph 1, it is observed that it exhibits the age distribution of the respondents

among different genders of the respondents and their opinion on the term res judicata. The maximum number of responses were collected from female respondents belonging to different age groups, the female respondents belonging to the age groups between 36-45 strongly agree to the statement that they were known about res judicata whereas both the Male respondents and female respondents above the age 50 disagrees with the statement that term res judicata. The Male respondents belonging to the age groups between 26-35 and 36-45 also feel that the term res judicata.

Discussion:

From the graph 1, it is understood that the Male respondents especially belonging to the age groups between 26-35 and 36-45 also feel that the term res judicata and it's necessity but the female respondents belonging to the age groups between 18-25 feels that they were not know about the term res judicata and it's necessity because they felt that educational qualification and the ability to earn by themselves are considered to be a respectable act.

Graph 2



Legend:

From the graph, it is observed that it exhibits the age distribution of the respondents among different genders of the respondents and their opinion on the applicability of res judicata in execution proceedings.

Results:

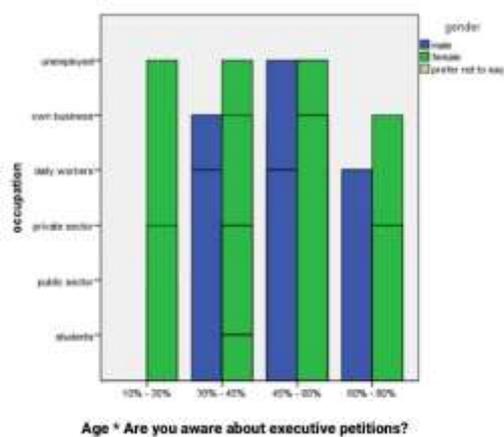
From the survey : in graph 2, it is observed that it exhibits the age distribution of the respondents among different genders of the respondents and their opinion on what measures the respondents

agree that the applicability of res judicata in execution proceedings. The maximum number of responses were collected from female respondents belonging to different age groups, the female respondents belonging to the age groups between 18-25 and 26-35 strongly agrees to the statement that the applicability of res judicata in execution proceedings, whereas the female respondents belonging to the age groups above 50 sparingly agrees to the statement that the applicability of res judicata in execution proceedings. The Male respondents between the age groups of 18-25 also agrees to the statement that the applicability of res judicata in execution proceedings.

Discussion:

From the graph 2, it is understood that the Male respondents especially belonging to the age groups between 18-25 and 26-35 strongly agrees to the statement that the applicability of res judicata in execution proceedings, the reason behind this opinion is that they feels that the the applicability of res judicata in execution proceedings are more prone to such situations in comparison to the males. Since the Male respondents between 18-25 also feel the same because of their educational qualification and knowledge gained about society and equality.

Graph 3



Legend:

From the graph, it is observed that it exhibits the occupation distribution of the respondents among different genders of the respondents and their opinion on executive petition.

Results:

From the survey: in graph 3, it is observed that it exhibits the occupation distribution of the

respondents among different genders of the respondents and their opinion on that executive petition. The maximum number of responses were collected from female respondents belonging to different occupation, the female respondents who are carrying out own business, daily workers and unemployed agrees to the statement that executive petition to a percentage of 45% - 60% whereas the Male respondents who are daily workers agrees to the statement that executive petition to a percentage of 60% - 80%

Discussion:

From the graph 3, it is understood that the Male respondents especially who are daily workers agrees to the statement that dowry deaths are increased after the executive petition in court proceedings to a percentage of 60% - 80% because they are more prone to the difficult situations of the middle class population families. Both the Male and female respondents who are sparingly above the poverty line and below the upper middle class line are well experienced about the executive petition in court proceedings.

SUGGESTIONS:

People even though most of them said they know about the term res judicata many laymen don't know about it, for which there should be lectures conducted to improve people's knowledge. People even though most of them said they know about the term executive petition, many laymen don't know about it, for which there should be lectures conducted to improve people's knowledge.

CONCLUSION:

People have some knowledge on court's legal terms and proceedings. That is people knew about the term Res judicata and executive petition but it was a survey conducted in a court and hence most of them knew about such terms but comparatively most of the laymen didn't know such terms. People should have knowledge classes on such terms so that people can have certain knowledge on how a court functions. The section 11 has made it clear that not only general principle of res judicata but also constructive res judicata apply to execution proceedings. The provisions of the section are now applicable to a proceeding for the execution of a decree, and references in the section to a suit, issue or former suit shall be construed as references respectively to a proceeding for the execution of a decree, question arising in such proceeding and a former proceeding for the execution of that decree. However, an application

by decree-holder to transfer certain papers to another Court for further execution is not an execution application and its dismissal does not bar a fresh application. The provisions of this Section were not expressly made applicable to execution proceedings. But the principle of res judicata has been extended to execution proceedings because the doctrine is based on the general principle of law, for if it were not binding, there would be no end to litigation. Explanation VII.— The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree. Thus, there should be no doubt that the principle of res judicata is applicable to execution proceedings also.

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