

JURISDICTION OF CIVIL COURTS – A CASE STUDY

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ABSTRACT

Jurisdiction has been not been explained in the Code of Civil Procedure. In simple words, it can be described as the power of court to settle the matter. The Indian Judiciary has involved the ancient legal maxim “Ubi justbi Remedium” which means that where there is a right there is a remedy. The judicial forum must have jurisdiction to deal to the matter. Hence, the jurisdiction commonly rests where the crime is committed.

Keywords: *Jurisdiction, Territorial, Pecuniary, Immovable property, Expressly barred, implicitly barred, Presumption.*

INTRODUCTION

Jurisdiction is defined as the limit of judicial authority or extent to which a court of law can exercise its authority over suits, cases, appeals etc. Jurisdiction is a key question for the court which goes to the root of the case and decide the fate of matter either at preliminary stage or on merit. If any order passed without jurisdiction, it becomes nullity and not enforceable by law.

Lack of jurisdiction and irregular exercise of jurisdiction

Whenever the suit is made before the court the initial issue is to decide whether the court has jurisdiction to deal with the matter. If the court has all the three territorial, pecuniary or subject matter jurisdiction then simply the court has the power to deal with any of the cases. If the court does not have any jurisdiction, then it will be recognized as lack of jurisdiction and irregular exercise of jurisdiction. When the court does not have jurisdiction to decide the case then such decision will be regarded as void or voidable depending upon the circumstances.

The basis to determine jurisdiction :-

Jurisdiction is determined mainly on the grounds of

1. Fiscal value
2. Geographical boundaries of a court
3. The subject matter of court.

Kinds of jurisdiction

1. **Pecuniary Jurisdiction** : Section 15 of the Civil Procedure Code provides that every suit shall be instituted in the court of the lowest grade competent to try it¹.

Suit amounting upto Rs. 3,00,000/- lie before the Junior Civil Judge's Court. Suits between Rs. 3,00,000/- and but not exceeding Rs. 15,00,000/- lie before District Courts. It is important to note that High Court has no Pecuniary Jurisdiction and only appeal lies.

Territorial jurisdiction 8.16 to 20² of the CPC deals with Territorial jurisdiction of a court Whereas Section 16 to 18 relates to immovable property and 19 and 20 deals with suits for compensation for wrongs to persons are movable property.

- 1 Territory of a court is decided after taking into account several factors. They are:

A. In case of immovable property

- a. If the suit is with regard to recovery, rent, partition, sale, redemption, determination of right of immovable property it shall be instituted in the court within the local limits of whose jurisdiction the property is situated.
- b. Immovable property situated within the jurisdiction of different courts
In such case the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated.
- c. In case of dispute between two or more persons with respect to movable property, business are any other wrong done

In the place where wrong are damage has been caused to a person are any damaged has been caused to movable property then the suit may be instituted either in the place where wrong are damaged caused or in the place where defendants (the person who caused the loss) resides as per the Civil Courts Act the pecuniary jurisdiction of the court is as follows:-

- d. where there is a dispute in business agreement or any kind of civil dispute except matrimonial matter than the suit may be instituted either in a place where the defendant resides or carries or business or in a place where the cause of action has arisen, i.e., where the dispute or wrong took place.
- e. In case of matrimonial dispute where a dispute arises between husband and wife with regard to their matrimonial life than the case may be filed in the place where marriage was solemnized or in the place where opposite party is residing or in the place where husband and wife last resided together or in the place where persons filing the case is residing.

¹ Mulla CPC, 20th Edition, Lexis Nexis, Volume – I Page No: 43

² Ibid Page No 43 to 46

Section of 9 of CPC deals with the jurisdiction of civil court in general it says that the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their connivance is either expressly or impliedly barred.

A civil court has jurisdiction to try a suit if two conditions are fulfilled.

1. A suit must be of a civil nature and
2. The connivance of such a suit should not have been expressly or impliedly barred.
 - A)** The expression “suit of civil nature” will cover private rights of obligation of a citizen political and religious questions are not covered by that expression. A suit in which the principal question is relates to caste or religion is not a suit of civil nature. But if the principal question in a suit is of a civil nature (they right to property or to an office) and jurisdiction incidentally involves the determination relating to a caste question or to religious right and ceremonies, it does not cease to be suit of a civil nature and the jurisdiction of a civil court is not barred. The court has jurisdiction to adjudicate upon those questions also in order to decide the principal question which is of a civil nature.
 - B) Suits Expressly Barred** A suit is said to be expressly barred when it is barred by any enactment for the time being in force. If there is any doubt about the ousting of jurisdiction of a civil court the court will lean to an interpretation which would maintain the jurisdiction every presumption should be made in favour of the jurisdiction of the civil court and the provisions of exclusion of jurisdiction of a court must be strictly constructed. If the remedy provided by the statute is not adequate and all questions cannot be decided by a special tribunal the jurisdiction of a civil court is not barred similarly when a court of limited jurisdiction prima facie and incidentally states something the jurisdiction of a civil court to finally decide the matter is not to ousted.
 - C) Suits Impliedly Barred :** A suit is said to be impliedly barred when it is barred by general principles of law. Where a specific remedy given by a statute, it there by deprives the person who insists upon a remedy of any other form than that given by the statute. Where an act creates an obligation and enforces its performance in a specified manner that performance cannot be enforced in any other manner similarly certain suits though of a civil nature, are barred from the cognigence of a civil court on the grounds of public policy. Those no suit shall lie for recovery of cost incurred in criminal prosecution or for enforcement of a right up on a contract hit by Section 23 of the Indian Contract Act, 1872 or against any judge for acts done in the course of his duties. Like was a civil court has no jurisdiction to adjudicate upon dispute of political nature.
 - D)** The question of jurisdiction is question of law which goes to the root of the case and is said to be decided first. A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The Court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed de’hors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts.

E) The Hon'ble Supreme Court in the case of **Dhulabhai, etc V State of Madhya Pradesh and others**³, while discussing the provision of **Section 9 of CPC laid down the law** as under :

- (I) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
- (II) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
- (III) Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intent becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunal so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.
- (IV) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that questions on a revision or reference from the decision of the Tribunals.
- (V) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
- (VI) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.
- (VII) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
- (VIII) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply. The Hon'ble Supreme Court, in the matter of (Abdul Gafar Vs. State of Uttarakhand)⁴ taking recourse to the

³ AIR, 1969 SC 78

⁴ 2008 (10)sec 97

jurisdiction of Civil Court, have observed that as per Section 9 CPC, in all types of civil disputes, the Civil Courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other Tribunal or Authority. Thus, the law confers on every person an inherent right to being a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute.

ISSUE OF JURISDICTION AS A PRELIMINARY ISSUE

(A) Section 9A of CPC provides that if, at the hearing of any application for granting or setting aside an order granting any interim relief, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. It provides that any such application shall be heard and disposed of by the Court expeditiously as possible and shall not in any

case be adjourned to the hearing of the suit. The provisions of law contained in Sub Section (2) of Section 9A empowers the Court to grant any such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.

(B) Order 14 Rule 2: *“Court to pronounce judgment on all issues*

1. Notwithstanding that case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule(2), pronounce judgment on all issues.
2. where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue related to
 - a) The jurisdiction of the Court or
 - b) A bar to the suit created by any law for the time being in force.
 and for the purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

C) Under O 7R. 11 (d) the plea shall be rejected where the suit appears from the statement in the plea to be barred by any law. Such plea is called plea of demurrer vide para 13 of *Ramesh B Desai Vs. Bipin Vadilal Mehta*⁵. However in this regard only and only plea allegations are to be considered and neither any averment either in the written statement or in any application made by the defendant nor any evidence adduced by the defendant is to be seen. In para 8 of *Bhau Ram Vs, Janak Singh*⁶, the Honourable Supreme Court held as follows:

⁵ AIR 2006 SC 3672

⁶ AIR 2012 SC 3023

The law has been settled by this court in various decisions that while considering an application under Order VII Rule 11 C.P.C, the court has to examine the averments in the plaint and the pleas taken by the defendant in its written statement would be irrelevant.

- D) In respect of resjudicata it has been held in *Vaish Aggarwal Panchayat V Inder Kumar*⁷ that this question is mixed question of law and fact requiring consideration of earlier judgment and pleading, hence on this ground plaint cannot be rejected under Order 7 Rule 11(d)
- E) Regarding bar of limitation it has been held that unless *it becomes apparent from the reading of the petition that the same is barred by* limitation the petition cannot be rejected under Order 7 Rule 11 (d) **C.P.C.** In *Fatehji & Company V L.M Nagpal*⁸ it was held that by reading the plaint alone and taking all the allegations made therein to be correct, suit for specific performance of agreement for sale was barred by limitation. Reversing the judgment of the High Court it was held that the trial court rightly rejected the plaint under Order 7 Rule 11 (d) C.P.C
- F) Plaint may be rejected under Order 7 Rule 11 (d) at any stage of the suit, even after settlement of issues vide *Sumar Singh V Kedar Nath S*⁹ referred to in Para 19 of *Vithalbhai V Union of India*¹⁰ quoted below:- In *Samar Singh V Kedar Nath*¹¹ this Court while dealing with an election petition has held that the power to summarily reject conferred by Order 7 Rule 11 of the Code of Civil Procedure can be exercised at the threshold of the proceedings and is also available, in the absence of any restriction statutorily placed, to be exercised at any stage of subsequent proceedings. However the Court has also emphasized the need of raising a preliminary objection as to maintainability as early as possible though the power of the court to consider the same at a subsequent stage is not taken away.
- G) Accordingly, in spite of O. 14 R. 2 not being mandatory, by virtue of O. 7 R. 11 (d) question of jurisdiction has to be decided as preliminary point / issue, if it does not require any evidence and inquiry into facts. However, under O. 14 R. 2 such issue may be decided as preliminary issue even after taking and considering the evidence relevant to the said issue. But this exercise is discretionary, while O. 7 R. 11 is mandatory.
- H) Under Order 14 Rule 2(2) no factual controversy can be decided. The Hon'ble Supreme Court in *Major S. S Khanna V Brig F. J Dillon*¹² held that – ***Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact would result in lop-sided trial***

⁷ AIR 2015 SC 3357

⁸ AIR 2015 SC 2301

⁹ AIR 1987 SC 1926

¹⁰ AIR 2005 SC 1891

¹¹ AIR 1987, SC 1929; 1987 Supp SCC 663

¹² AIR 1964 SC 497, Para 18

of the suit. Even though decision on issue of fact is barred but consideration of evidence is not barred under Order 14 Rule 2(2) otherwise it will become redundant as the entire filed would be covered by Order 7 Rule 11 (d). The distinction is that such evidence which is not denied or in normal course cannot be denied can be taken into consideration under Order 14 Rule 2(2) while deciding issue of law as preliminary issue. Suppose in a plaint nothing is stated regarding earlier litigation between the same parties and on the same cause of action. The defendant asserts that the suit is barred by res-judicata or Order 9 Rule 9 and files certified copies of pleading and judgments of the earlier suit. The plaint cannot be rejected under Order 7 Rule 11(d) as it does not disclose the bar.

- I) However, the issue of bar framed on the plea of the defendant may be decided as preliminary issue under Order 14 Rule 2(2) after taking into consideration the evidence adduced by the defendant in the form of certified copies unless plaintiff disputes correctness of the same. Similarly at the stage of Order 14 Rule 2(2) evidence of parties or their representatives under Order 10 Rule 2 may also be taken into consideration. In fact, such statement may be taken into consideration even at the stage of Order 7 Rule 11(a).
- J) Under Order 7 Rule 11(a) – the plaint shall be rejected where it does not disclose a cause of action. There is lot of difference between not having a cause of action, which may be decided after evidence, and not disclosing cause of action which is to be decided by reading only the plaint.

CHALLENGE AT WHAT STAGE

- A) Section 21 of the CPC deals with the stage challenging the jurisdiction.

The stage of challenging the jurisdiction came up before Hon'ble Apex Court in *Harshad Chiman Lal Mod V DLF Universal Ltd* and¹³ observed that the jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter.

- B) So far as **territorial** and **pecuniary** jurisdiction are concerned, objection to such jurisdiction has to be taken at the **earliest possible opportunity and in any case at or before settlement of issues**. The law is well settled on the point that if such objection is not taken at the **earliest**, it cannot be allowed to be taken at a **subsequent stage**. Jurisdiction as to **subject matter**, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A

¹³ AIR 2005 SC 496

defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. In **Chief Engineer Hydel Project Vs. Ravinder Nath**¹⁴ Hon'ble Apex Court observed that once the original decree itself has been held to be without jurisdiction and hit by the doctrine **corum non judice**, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage.

PRESUMPTION AS TO JURISDICTION

In dealing with the question whether a civil courts jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind that every presumption should be made in favor of the jurisdiction of the civil court. The exclusion of jurisdiction of a civil court to entertain civil causes should not be readily inferred unless the relevant statute contains an express provision to that effect or leads to a necessary and inevitable implication of the nature.

GENERAL PRINCIPLES RELATING TO JURISDICTION OF CIVIL COURTS

- a. A Civil court has jurisdiction to try all suits of civil nature unless their cognizance is barred either expressly or impliedly.
- b. Concern can neither confer nor take away jurisdiction of a court.
- c. A decree passed by a court without jurisdiction is a nullity and the validity thereof can be challenged at any stage of the proceedings, in execution proceedings or even in collateral proceedings.
- d. There is a distance between want of jurisdiction and irregular exercise thereof.
- e. Every court has inherent power to decide the question of its own jurisdiction.
- f. Jurisdiction of a court depends upon the averments made in plaint and upon the defense in a written statement.
- g. For deciding jurisdiction of a court substance of matter and not its form is important.
- h. Every presumption should be made in favor of jurisdiction of a civil court.
- i. A statute ousting the jurisdiction of a civil court must be strictly construed.
- j. Burden of proof exclusion of jurisdiction of a court is on the party who asserts it.
- k. Even where jurisdiction of a civil court is barred it can still decide whether the provisions of an Act have been complied with or whether an order was passed dehors the provision of law.

¹⁴ AIR 2008 SC 1315

CONCLUSION

Civil Court has jurisdiction to investigate whether tribunal and quaritribunal bodies or legal executive added within their jurisdiction. It can be presumed that Section 9 essentially deals with the issue of the Civil Court's jurisdiction to consider a matter, Civil Court has no jurisdiction to consider a suit of civil nature except when its notification is expressly has jurisdiction to resolve the problem of its jurisdiction.

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8. AIR 2012 SC 3023
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