PAPER PRESENTATION

ON

SECTION 9 OF THE CODE OF CIVIL PROCEDURE, 1908

BY

Smt. VANGA VENKATA APARNA,
CIVIL JUDGE, JUNIOR DIVISION.

Presently working as a
A.J.C.J – CUM- J.F.C.Magistrate,
Pithapuram.

HISTORICAL BACKGROUND:

The Civil Procedure Code was enacted during British period. The ecclesiastical courts are peculiar to England. The term "ecclesiastical law" may be used both in a general and in a technical sense. In its general sense it means the law relating to any matter concerning the Church of England administered and enforced in any court; in its technical sense it means the law administered by ecclesiastical courts and persons.

In ancient or medieval India, the courts were established by King which heard all disputes. No religious institution was so strong and powerful as church in England. The Indian outlook was always secular. Therefore, no parallel can be drawn between the administration of the churches by ecclesiastical courts in England. Religion in India has always been ritualistic. However, that did not interfere with religion. Disputes pertaining to religious office including performance of rituals were always decided by the courts established by law. The legislature enacting the law was aware that there were no ecclesiastical courts either in ancient or Medieval India as in England. That is why it added Explanation I to Section 9 of the Civil Procedure Code.

JURISDICTION OF THE CIVIL COURTS:

One of the basic principles of law is that Ubi jus ibi remediem. This principle lays down that where there is a right, there is a remedy; that is, there is no wrong without a remedy. Section 9 CPC is casted in enforcement of this principle. The jurisdiction of the Civil Court under Section 9 is a plenary one. It directs civil courts to try all suits of civil nature, unless barred.

SECTION 9 OF CPC READS AS UNDER:

Courts To Try All Civil Suits Unless Barred -

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a **civil nature** excepting suits of which their cognizance is either **expressly or impliedly barred**.

Explanation I - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place**".**

On plain reading of the Section says that every civil suit is cognisable unless it is barred and 'there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may bring a suit of one's choice. The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976, bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word `**shall**' and the expression, `**all suits of a civil nature'** unless `**expressly or impliedly barred**'.

The word ’shall’ makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section.

ALL THE SUITS OF A CIVIL NATURE:

The word `**civil**' according to dictionary means, `relating to the **citizen as an individual**; **civil rights**'. In Black's Legal Dictionary it is defined as, `relating to **provide rights and remedies sought by civil actions as contrasted with criminal proceedings**'. In law it is understood as an antonym of criminal.

Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of `civil'. Thus, there is no doubt about the width of the word `civil'. Its width has been stretched further by using the word `**nature**' along with it. That is even those suits are cognisable which are not only civil but are even of **civil nature**.

The word `**nature**' has been defined as, `the fundamental qualities of a person or thing; identity or essential character; sort; kind; character'. It is thus wider in content. The word `civil nature' is wider than the word `civil'. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.

The expression "suit of civil nature" will cover private rights of obligation of a citizen but the 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 a civil nature. But if the

principal question in a suit is of a civil nature (The right to property or to an office) and the adjudication incidentally involves the determination relating to a caste question or to religious rights and ceremonies, it does not cease to be suit of a civil nature and the jurisdiction of a civil court is not barred.

Here Are Some Examples Of Suits Of A Civil Nature:

Property-Related Suits:

1. Disputes over property ownership
2. Partition suits
3. Easement rights
4. Trespass
5. Landlord-Tenant disputes

Contract-Related Suits:

1. Breach of contract
2. Specific performance

Declaratory Suits

1. Declaration of Legal Status
2. Right to Office or Position

Personal Rights:

1. Defamation
2. Injunctions

Family and Matrimonial Disputes:

1. Maintenance Suits
2. Restitution of Conjugal Rights
3. Custody of Children
4. Declaration of Marital Status

Other Examples

1. Disputes over inheritance
2. Disputes over intellectual property
3. Disputes over employment contracts

<u>What about Religious matters:</u>

"*Are religious rights, for instance right to worship in a religious place, entry in a temple, administration of religious shrines for instance a temple, mosque or a church are rights of civil nature*?"

The answer is given by **Explanation I**. prima facie suits raising questions of religious rites and ceremonies only are not maintainable in a civil Court, for they do not deal with legal rights of parties.

But the explanation to the section accepting the said undoubted position says that a suit in which the right to property or to an office is contested is a suit of civil nature notwithstanding that such right may depend entirely on the decision of a question as to religious rites or ceremonies. It implies two things, namely, (i) a suit for an office is

a suit of a civil nature; and (ii) it does not cease to be one even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies."

Explanation I is not restrictive of the right or matters pertaining to religion. It only removes the doubt to enable the courts to entertain suits where dispute about religious office is involved. But the court may refrain from adjudicating upon purely religious matters as it may be handicapped to enter into the hazardous, hemisphere of religion.

The emphasis on the expression **'is contested'** used in Explanation I is not of any consequence. It widens the ambit of the Explanation and include in its fold any right which is contested to be a right of civil nature even though such right may depend on decisions of questions relating to religious rights or ceremonies. But from that it cannot be inferred that where the right to office or property is not contested it would cease to be a suit cognisable under Section 9.

Explanation II widens it further to even those offices to which no fees are attached. Therefore, it was visualised from the inception that a suit in which the right to property or religious office was involved it would be a suit of civil nature. Reason for this is both historical and legal. In England ecclesiastical law was accepted as a part of the common law binding on all. But, `the introduction of English Law into a colony does not carry with it English ecclesiastical law'. They did not interfere with religion. Disputes pertaining to

religious office including performance of rituals were always decided by the courts established by law but not by ecclesiastical courts as in England.

There is manifestly nothing wrong in principle that the holder of a spiritual office should be subject to discipline and should be liable to deprivation for what may be called misconduct from an ecclesiastical point of view or for flagrant and continued neglect of duty. It is plain that although so far as Hindus are concerned, there is now no State Church and no ecclesiastical court, there is nothing to prevent civil courts from determining questions such as those pertaining to spiritual offices and from holding that the Pujari has been removed from his office on valid grounds."

CASE LAWS:

- **In Narasimma Chariar & Ors. vs. Sri Kristna Tata Chariar 6 Mad. H.C. Reports 449** it was claimed by the plaintiff that they had the exclusive rights to Adhyapaka Mirass of reciting certain texts or chants in a temple. In that suit it was held:

  "*The claim is for a specific pecuniary benefit to which plaintiffs declare themselves entitled on condition of reciting certain hymns.*

There can exist no doubt that the right to such benefits is a question which the Courts are bound to entertain, and cannot cease to be such a question, because claimed on account of some service connected with religion.

If, to determine the right to such pecuniary benefit, it becomes necessary to determine incidentally the right to perform certain religious services, we know of no principle which would exonerate the Court from considering and deciding the point".

- It was approved by the Privy Council in **Krishname & Ors. vs. Krishnasamy & Ors. 1879 ILR 2 Mad. 62** that-

  "It is certainly not the duty of the Civil Court to pronounce on the truth of religious tenets nor to regulate religious ceremony; but, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed and what is the usage they have accepted as established for the regulation of their rights interse."

- In **U.W. Baya vs. U. Zaw Ta. AIR 1914 Lower Burma 178 (1)** where a question arose as to which was the forum where an action for violation of religious rights could be brought, it was

held, "*there are, therefore, no ecclesiastical authorities in Lower Burma. Section 9, Civil P.C. enacts that the courts shall subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which the cognizance is either expressly or impliedly barred. This is a suit of a civil nature. It is a claim of certain lands and manuscripts. The civil courts, in our opinion, clearly have jurisdiction to decide the suit and should do so".*

EXPRESSLY OR IMPLIEDLY BARRED:

The expression “expressly or impliedly barred” in Section 9 of the CPC means that the prohibition on the court’s jurisdiction may be explicitly stated in a law or legal provision, or it may be inferred or implied by necessary implications.

For example, if there is a specific statute or law that prohibits a court from hearing a particular type of suit, such as a suit involving a matter that falls under the exclusive jurisdiction of a specialized tribunal, then the court’s jurisdiction may be expressly barred. On the other hand, if there is a legal principle or doctrine that suggests that a court should not entertain a certain type of suit, even if there is no

explicit provision, then the court's jurisdiction may be impliedly barred.

Express bar:

An express bar of jurisdiction refers to a specific statutory provision that explicitly excludes the jurisdiction of a civil court over a particular matter or dispute and legislature clearly mentions that a civil court shall not entertain a suit under the relevant law.

In case of the express bar, the statute uses clear and specific language to exclude jurisdiction and exclusion is direct and unambiguous, leaving no room for interpretation.

For example, Sec 293 of Income Tax Act, 1961 says that "No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act", which expressly bars the jurisdiction of the civil courts.

Implied bar:

When a lawsuit is prohibited by broad legal principles, it is said to be impliedly banned. When a statute specifies a certain remedy, it denies the individual who demands a remedy any other form than that specified by the statute. An obligation that is created by an act and whose execution is enforced in a certain way is not subject to enforcement in any other way.

Case laws:

- In the case of the **Dhulabhai v. State of Madhya Pradesh** AIR 1969 SC 78; (1968) 3 SCR 662

  Issue involved is whether a civil suit be maintained to challenge a tax and seek refund when the taxing statute provides a specific remedy, and also bars civil court jurisdiction?

In this case the Hon'ble Supreme court laid down a **seven-point test** (often cited as the **Dhulabhai principles**) to determine **when civil court jurisdiction is barred** — either **expressly or impliedly**.

1. Where the statue 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.
2. 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.

3. 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 question on a revision or reference from the decision of the Tribunals.
4. 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.
5. Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.
6. 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.
7. An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

❖ **State of Andhra Pradesh v. Majeti Laxmi Kanth Rao (2000) 3 SCC 689**

Issue involved is Whether the **jurisdiction of the civil court** is **impliedly barred** in matters concerning **land acquisition** under the Land Acquisition Act, 1894.

The Hon'ble Supreme Court held as -

"Where the statute provides a complete machinery for the determination of claims and rights arising under it and the statute itself creates special rights or liabilities, the jurisdiction of the civil court is impliedly barred."

"A suit challenging the acquisition proceedings on grounds other than those permitted under the statute is not maintainable in a civil court."

Where the statute expressly bars civil court jurisdiction, the bar must be respected and Where a statute creates a special right and provides a complete mechanism for enforcement, civil court jurisdiction is impliedly barred, even without express words. Civil

court jurisdiction survives, if the statute does not expressly or impliedly bar jurisdiction and the remedy is inadequate, the civil court may still entertain a suit.

Civil court jurisdiction is not barred if the action under the statute is taken without jurisdiction, or is fraudulent, malafide, or violates principles of natural justice and also the Civil courts retain jurisdiction in cases involving fundamental rights, even if the special statute appears to bar their role.

Intervention Of The Civil Court Despite Bar:

Even if a statute expressly or impliedly bars suits, civil courts can still entertain suits of civil nature if the action under the statute results in violation of legal rights, fraud, lack of jurisdiction, or violation of natural justice.

Even when statutes create special forums (e.g., tribunals, authorities), civil courts retain the role of ultimate protectors of civil rights — especially when such rights are violated outside the boundaries of the special law and their jurisdiction is never lightly excluded.

The Supreme Court has consistently cautioned that Ousting the jurisdiction of a civil court is a serious matter and it cannot be

presumed lightly. The intention to exclude must be clearly expressed or necessarily implied in the statute.

In the following circumstances, the civil courts may interfere though there is bar to entertain the suits:

- If the statutory authority acts with fraud or malice, its actions are void
- Authority acts beyond the scope of its powers
- No hearing given, biased decision, procedural unfairness
- Constitutional remedies are always available
- If the statutory remedy is not available or ineffective
- If the right violated is independent of the statute that bars jurisdiction

Case laws:

- In the case of the **Dhulabhai v. State of Madhya Pradesh** AIR 1969 SC 78; (1968) 3 SCR 662

  "where the statue gives a finality to the orders of the s[ecial 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, 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.

CONCLUSION:

Section 9 of the CPC is fundamental provision that confers jurisdiction upon civil courts to try all suits of a civil nature, unless such jurisdiction is expressly or impliedly barred by statute. It reflects the fundamental right to access justice and embodies the presumption in favour of judicial recourse.

Jurisdiction means and includes any authority conferred by the law upon the court, tribunal or judge to decide or adjudicate any dispute between the parties or pass judgment or order. Jurisdiction is

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.

Suits of civil nature under the CPC form a critical part of the Indian legal system, providing a framework for the resolution of civil disputes in a fair and orderly manner.

The scope of suits of civil nature under the CPC is extensive and covers various types of civil disputes. These may include suits for recovery of money, suits for specific performance of contracts, suits for declaration of rights, suits for injunctions, suits for partition of property, suits for damages, and many others. The CPC provides a procedural framework for conducting these suits, ensuring that civil disputes are resolved through a systematic and fair legal process.

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