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2. IMPORTANT DEFINITIONS

In Section 2 of the Code of Civil Procedure, *inter alia*, the following important definitions are given:

(1) Decree[5]

(a) *Meaning*

The adjudications of a court of law may be divided into two classes: (*i*) decrees, and (*ii*) orders.

Section 2(2) of the Code defines the term "decree" in the following words:

> "'Decree' means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include:
>
> (*a*) any adjudication from which an appeal lies as an appeal from an order, or
>
> (*b*) any order of dismissal for default.
>
> *Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

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1. *Carew & Co. Ltd.* v. *Union of India*, (1975) 2 SCC 791 at p. 805: AIR 1975 SC 2260 at p. 2272.
2. *Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1 at p. 96: AIR 1975 SC 2299 at p. 2357.
3. *Ibid.* ("Unless there is anything repugnant in the subject or context"; S. 2).
4. *Carew & Co. Ltd.* v. *Union of India*, (1975) 2 SCC 791 at p. 804.
5. *See also infra*, Pt. II, Chap. 15.

(b) *Essential elements*

In order that a decision of a court may be a "decree", the following elements must be present:[6]

(*i*) There must be an adjudication;
(*ii*) Such adjudication must have been done in a suit;
(*iii*) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit;
(*iv*) Such determination must be of a conclusive nature; and
(*v*) There must be a formal expression of such adjudication.

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(*i*) *Adjudication.*—For a decision of a court to be a decree, there must be an adjudication, *i.e.* a judicial determination of the matter in dispute. If there is no judicial determination of any matter in dispute, it is not a decree.[7] Thus, a decision on a matter of an administrative nature, or an order dismissing a suit for default of appearance of parties or dismissing an appeal for want of prosecution cannot be termed as a decree inasmuch as it does not *judicially* deal with the matter in dispute.[8] Further, such judicial determination must be by a court. Thus, an order passed by an officer who is not a court is not a decree.[9]

(3) Judgment[59]

(a) *Meaning*

"Judgment" means the statement given by a judge of the grounds of a decree or order.[60]

(b) *Essentials*

The essential element of a judgment is that there should be a statement for the grounds of the decision.[61] Every judgment other than that of a Court of Small Causes should contain (*i*) a concise statement of the case; (*ii*) the points for determination; (*iii*) the decision thereon; and (*iv*) the reasons for such decision. A judgment of a Court of Small Causes may contain only points (*ii*) and (*iii*). Sketchy orders which are not self-contained and cannot be appreciated by an appellate or revisional court without examining all the records are, therefore, unsatisfactory and cannot be said to be judgments in that sense.

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(8) Foreign judgment[75]

"Foreign judgment" means a judgment of a foreign court.[76] The crucial date to determine whether the judgment is of a foreign court or not is the date of the judgment and not the date when it is sought to be enforced or executed.[77]

Thus, a judgment of a court which was a foreign court at the time of its pronouncement would not cease to be a foreign judgment by reason of the fact that subsequently the foreign territory has become a part of the Union of India.[78] On the other hand, an order which was good and competent when it was made and which was passed by a tribunal which was domestic at the date of its making and which could at that date have been enforced by an Indian court, does not lose its efficacy by reason of the partition.[79]

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not a legal representative

(10) Mesne profits[82]

(a) *Meaning*

"Mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.[83]

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(b) *Object*

Every person has a right to possess his property. And when he is deprived of such right by another person, he is not only entitled to restoration of possession of his property, but also damages for wrongful possession from that person. The mesne profits are thus a compensation paid to the real owner.

The object of awarding a decree for mesne profits is to compensate the person who has been kept out of possession and deprived of enjoyment of his property even though he was entitled to possession thereof.[84]

(e) *Test*

The test to ascertain mesne profits is not what the plaintiff has lost by being out of possession but what the defendant gained or might reasonably and with ordinary prudence have gained by such wrongful possession.[89]

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Chapter 1

Jurisdiction of Civil Courts

SYNOPSIS

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1. GENERAL

The fundamental principle of English Law that wherever there is a right, there is a remedy (*ubi jus ibi remedium*) has been adopted by the Indian legal system also. In fact, right and remedy are but the two sides of the same coin and they cannot be separated from each other. Accordingly, a litigant having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or

11. JURISDICTION OF CIVIL COURTS

(1) Section 9

Under the Code of Civil Procedure, a civil court has jurisdiction to try all suits of a civil nature unless they are barred. Section 9 of the Code reads as under:

"The Court 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."

(2) Conditions

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

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(*i*) The suit must be of a civil nature; and

(*ii*) The cognizance of such a suit should not have been expressly or impliedly barred.

(a) *Suit of civil nature*

(*i*) *Meaning.*—In order that a civil court may have jurisdiction to try a suit, the first condition which must be satisfied is that the suit must be of a civil nature. But what is a suit of a civil nature? The word "civil" has not been defined in the Code. But according to the dictionary meaning,[45] it pertains to private rights and remedies of a citizen as distinguished from criminal, political, etc. 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 expression "civil nature" is wider than the expression "civil proceeding".[46] Thus, a suit is of a civil nature if the principal question therein relates to the determination of a civil right and enforcement thereof. It is not the status of the parties to the suit, but the subject-matter of it which determines whether or not the suit is of a civil nature.

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(*ii*) *Nature and scope.*—The expression "suit of a civil nature" will cover private rights and obligations of a citizen. Political and religious questions are not covered by that expression. A suit in which the principal question 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 a suit of a civil nature and the jurisdiction of a civil court is not barred.[47] The court has jurisdiction to adjudicate upon those questions also in order to decide the principal question which is of a civil nature.[48] Explanation II has been added by the Amendment Act of 1976. Before this Explanation, there was a divergence of judicial opinion as to whether a suit relating to a religious office to which no fees or emoluments were attached can be said to be a suit of a civil nature. But the legal position has now been clarified by Explanation II which specifically provides that a suit relating to a religious office is maintainable whether or not it carries any fees or whether or not it is attached to a particular place.

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(*v*) *Suits of civil nature: Illustrations.*—The following are suits of a civil nature:

(*i*) Suits relating to rights to property;
(*ii*) Suits relating to rights of worship;
(*iii*) Suits relating to taking out of religious processions;

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(*iv*) Suits relating to right to shares in offerings;
(*v*) Suits for damages for civil wrongs;
(*vi*) Suits for specific performance of contracts or for damages for breach of contracts;
(*vii*) Suits for specific reliefs;
(*viii*) Suits for restitution of conjugal rights;
(*ix*) Suits for dissolution of marriages;
(*x*) Suits for rents;
(*xi*) Suits for or on accounts;
(*xii*) Suits for rights of franchise;
(*xiii*) Suits for rights to hereditary offices;
(*xiv*) Suits for rights to *Yajmanvritis*;
(*xv*) Suits against wrongful dismissals from service and for salaries, etc.

(*vi*) *Suits not of civil nature: Illustrations.*—The following are not suits of a civil nature:

(*i*) Suits involving principally caste questions;
(*ii*) Suits involving purely religious rites or ceremonies;
(*iii*) Suits for upholding mere dignity or honour;
(*iv*) Suits for recovery of voluntary payments or offerings;
(*v*) Suits against expulsions from caste, etc.

(b) *Cognizance not barred*

As stated above, a litigant having a grievance of a civil nature has a right to institute a civil suit unless its cognizance is barred, either expressly or impliedly.

(*i*) *Suits expressly barred.*—A suit is said to be "expressly barred" when it is barred by any enactment for the time being in force.[52] It is open to a competent legislature to bar jurisdiction of civil courts with respect to a particular class of suits of a civil nature, provided that, in doing so, it keeps itself within the field of legislation conferred on it and does not contravene any provision of the Constitution.[53]

But every presumption should be made in favour of the jurisdiction of a civil court and the provision of exclusion of jurisdiction of a court must

(*ii*) *Suits impliedly barred.*—A suit is said to be impliedly barred when it is barred by general principles of law.

Where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form than that given by the statute.[58] Where an Act creates an obligation and enforces its performance in a specified manner, that performance cannot be enforced in any other manner.[59]

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1. GENERAL

In this Chapter, we intend to discuss two important doctrines: (*i*) Doctrine of *res sub judice*, Section 10; and (*ii*) Doctrine of *res judicata*, Section 11.

Section 10 deals with stay of civil suits. It provides that 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 and that the court in which the previous suit is pending is competent to grant the relief claimed.

Section 11, on the other hand, relates to a matter already adjudicated upon. It bars the trial of a suit or an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit.

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2. RES SUB JUDICE: STAY OF SUIT: SECTION 10

(1) Section 10

Section 10 reads thus:

> "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 having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or constituted by the Central Government and having like jurisdiction, or before the Supreme Court."

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

(2) Nature and scope

Section 10 declares that no court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the court before which the previously instituted suit is pending is competent to grant the relief sought.[1]

The rule applies to trial of a suit and not the institution thereof. It also does not preclude a court from passing interim orders, such as, grant of injunction or stay, appointment of receiver,[2] etc. It, however, applies to appeals[3] and revisions.[4]

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(3) Object

The object of the rule contained in Section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.[5]

The key words in Section 10 are "the matter in issue is directly and substantially in issue in a previously instituted suit". Hence, when the matter in controversy is the same, then only Section 10 applies. When it is different, the section has no application.[6]

The section intends to protect a person from multiplicity of proceedings and to avoid a conflict of decisions. It also aims to avert inconvenience to the parties and gives effect to the rule of *res judicata*.[7]

It is to be remembered that the section does not bar the institution of a suit, but only bars a trial, if certain conditions are fulfilled. The subsequent suit, therefore, cannot be dismissed by a court, but is required to be stayed.

(4) Conditions

For the application of this section, the following conditions must be satisfied:

(*i*) There must be two suits, one previously instituted and the other subsequently instituted.

(*ii*) The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.

(*iii*) Both the suits must be between the same parties or their representatives.

(*iv*) The previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other court in India or in any court beyond the limits of India established or continued by the Central Government or before the Supreme Court.

(*v*) The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.

(*vi*) Such parties must be litigating under the same title in both the suits.

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3. RES JUDICATA: SECTION 11

(1) General

Section 11 of the Code of Civil Procedure embodies the doctrine of *res judicata* or the rule of conclusiveness of a judgment, as to the points decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. In the absence of such a rule there will be no end to litigation and the parties would be put to constant trouble, harassment and expenses.[20]

This doctrine has been accepted in all civilized legal systems. Under the Roman Law, a defendant could successfully contest a suit filed by a plaintiff on the plea of "*ex captio res judicata*". It was said, "one suit and one decision is enough for any single dispute". In the words of Spencer Bower, *res judicata* means "a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or matter in litigation, and over the parties thereto".

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The doctrine of *res judicata* has been explained in the simplest possible manner by Das Gupta, J. in the case of ***Satyadhyan Ghosal*** **v.** ***Deorjin Debi***[21] in the following words:

> "The principle of *res judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res* is *judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law, has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again."[22]

(2) Section 11

Section 11 of the Code of Civil Procedure reads thus:

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression 'former suit' shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter abovereferred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

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.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit in which such issue has been subsequently raised."

(3) Nature and scope

"Res" means "subject-matter" or "dispute" and "Judicata" means "adjudged", "decided" or "adjudicated". "Res Judicata" thus means "a matter adjudged" or "a dispute decided".[23]

The doctrine of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than latter, come to an end.[24]

[23] (2014) 3 SCC (Civ) 134.

The principle is also founded on justice, equity and good conscience which require that a party who has once succeeded on an issue should not be harassed by multiplicity of proceedings involving the same issue.[25] Section 11 of the Code contains in statutory form, with illuminating explanations very salutary principle of public policy.[26] It embodies the rule of conclusiveness and operates as a bar to try the same issue once again. It thereby avoids vexatious litigation.[27]

(4) Object

The doctrine of *res judicata* is based on three maxims:

(*a*) *nemo debet bis vexari pro una et eadem causa* (no man should be vexed twice for the same cause);
(*b*) *interest reipublicae ut sit finis litium* (it is in the interest of the State that there should be an end to a litigation); and
(*c*) *res judicata pro veritate occipitur* (a judicial decision must be accepted as correct).

As observed by Sir Lawrence Jenkins,[28] "the rule of *res judicata*, while founded on account of precedent, is dictated by a wisdom which is for all times".

Thus, the doctrine of *res judicata* is the combined result of public policy reflected in maxims (*b*) and (*c*) and private justice expressed in maxim (*a*); and they apply to all judicial proceedings whether civil or criminal. But for this rule there would be no end to litigation and no security for any person, the rights of persons would be involved in endless confusion and great injustice done under the cover of law.[29] The principle is founded on justice, equity and good conscience.[30]

The leading case on the doctrine of *res judicata* is the *Duchess of Kingstone case*[31], wherein Sir William de Grey made the following remarkable observations:

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25. *Ibid*, *see also infra*, "Object".
26. *Narayan Prabhu Venkateswara* v. *Narayana Prabhu Krishna*, (1977) 2 SCC 181: AIR 1977 SC 1268.
27. *Sulochana Amma* v. *Narayanan Nair*, (1994) 2 SCC 14: AIR 1994 SC 152; *Workmen* v. *Board of Trustees, Cochin Port Trust*, (1978) 3 SCC 119.
28. *Sheoparsan Singh* v. *Ramnandan Singh*, (1915-16) 43 IA 91: AIR 1916 PC 78.
29. *Daryao* v. *State of U.P.*, AIR 1961 SC 1457 at pp. 1462: (1962) 1 SCR 574; *Satyadhyan Ghosal* v. *Deorjin Debi*, AIR 1960 SC 941: (1960) 3 SCR 590; *Parashuram Pottery Works Co. Ltd.* v. *ITO*, (1977) 1 SCC 408: AIR 1977 SC 429; *Radhasoami Satsang* v. *CIT*, (1992) 1 SCC 659: AIR 1992 SC 377; *Sulochana Amma* v. *Narayanan Nair*, (1994) 2 SCC 14; *Swamy Atmananda* v. *Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51: AIR 2005 SC 2396; *Kunjan Nair* v. *Narayanan Nair*, (2004) 3 SCC 277: AIR 2004 SC 1761; *State of Haryana* v. *State of Punjab*, (2004) 12 SCC 673; *Gangai Vinayagar Temple* v. *Meenakshi Ammal*, (2009) 9 SCC 757; M. *Nagabhushana* v. *State of Karnataka*, (2011) 3 SCC 408: (2011) 1 SCC (Civ) 733.
30. *Lal Chand* v. *Radha Krishan*, (1977) 2 SCC 88 at p. 98: AIR 1977 SC 789 at pp. 796.
31. *Smith's Leading cases* (13th Edn.) at p. 644.

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(9) Res judicata and res sub judice[43]

The doctrine of *res judicata* differs from *res sub judice* in two aspects:

(*i*) whereas *res judicata* applies to a matter adjudicated upon (*res judicatum*), *res sub judice* applies to a matter pending trial (*sub judice*); and

(*ii*) *res judicata* bars the trial of a suit or an issue which has been decided in a former suit, *res sub judice* bars trial of a suit which is pending decision in a previously instituted suit.

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(10) Res judicata and lis pendens[44]

The doctrine of *lis pendens* is only one aspect of the rule of *res judica* Whereas the principle of *lis pendens* laid down in Section 52 of the Trans **of Property Act, 1882** is that an alienee *pendente lite* is bound by the c come of the litigation, the rule in Section 11 of the Code relates to mat which have passed into *rem judicatam*. Where a conflict arises between doctrine of *res judicata* and *lis pendens*, the former will prevail over latter. In other words, once a judgment is duly pronounced by a compe court in regard to the subject-matter of the suit in which the doctrine

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pendens applies, the said decision would operate as *res judicata* and would bind not only the parties thereto but also the transferees *pendente lite*.

Let us understand this principle by an illustration. *A* files a suit against *B* for declaration that he is the owner of the suit property. During the pendency of the suit *B* transfers property to *C*. The doctrine of *lis pendens* will apply to such transfer and if a decree is passed in favour of *A*, *C* cannot claim title over *A*. But if in another suit by *C* against *B* regarding the same property, decree is passed in favour of *B* before the suit filed by *A* is decided, such decree will operate as *res judicata* against *A* notwithstanding the doctrine of *lis pendens* and transfer in favour of *C* during the pendency of the suit filed by *A* against *B*.

(11) Res judicata and withdrawal of suit[45]

Order 23, Rule 1 deals with withdrawal of suits. It enacts that where the plaintiff withdraws the suit or abandons his claim without the leave of the court, he will be precluded from instituting a fresh suit in respect of the same cause of action.

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The distinction between *res judicata* and withdrawal of suit lies in the fact that while in the former the matter is heard and finally decided between the parties, in the latter the plaintiff himself withdraws or abandons his claim before it is adjudicated on merits.

(12) Res judicata and estoppel[46]

The doctrine of *res judicata* is often treated as a branch of the law of estoppel.[47] *Res judicata* is really estoppel by verdict or estoppel by judgment (record).[48] The rule of constructive *res judicata* is nothing else but a rule of estoppel.[49] Even then, the doctrine of *res judicata* differs in essential particulars from the doctrine of estoppel.[50]

(21) Conditions

It is not every matter decided in a former suit that will operate as *res judicata* in a subsequent suit. To constitute a matter as *res judicata* under Section 11, the following conditions must be satisfied:[69]

(*I*) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually (Explanation III) or constructively (Explanation IV) in the former suit (Explanation I). (Explanation VII is to be read with this condition.)

(*II*) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim. (Explanation VI is to be read with this condition.)

(*III*) Such parties must have been litigating under the same title in the former suit.

(*IV*) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.[70] (Explanations II and VIII are to be read with this condition.)

(*V*) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit. (Explanation V is to be read with this condition.)

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