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LEGAL NOTES

CODE OF CIVIL PROCEDURE, 1908 (CPC)

Selected Sample Questions & Answers

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1. What is res judicata? How has the law relating to res judicata evolved over the years?

Introduction

Res judicata is a fundamental doctrine of civil procedure which gives finality to judicial decisions. The expression literally means **"a matter adjudged."** The underlying principle is that a matter which has already been finally adjudicated by a competent court between the parties should not ordinarily be permitted to be litigated again.

The doctrine rests upon two closely connected considerations: **public policy**, which requires an end to litigation, and **private justice**, which protects a person from being vexed repeatedly in respect of the same dispute. The Supreme Court has repeatedly recognised that the doctrine is intended to preserve the finality and conclusiveness of judicial decisions. In *Satyadhyan Ghosal v. Deorajin Debi*, AIR 1960 SC 941, the Supreme Court described the principle as being founded on the need to give finality to judicial decisions.

In India, the doctrine is principally embodied in **Section 11 of the Code of Civil Procedure, 1908 (CPC)**. However, Section 11 is not the entire source or extent of the general principle of res judicata. Judicial decisions have recognised the wider principle in appropriate circumstances even outside the strict confines of Section 11.

Statutory Basis — Section 11 CPC

Section 11 CPC provides:

"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..."

The statutory rule applies where the matter was directly and substantially in issue in the former suit, the former proceeding was between the same parties or persons claiming under them, the parties litigated under the same title, the former court was competent in the manner contemplated by the section, and the matter was heard and finally decided by that court.

The principal requirements may therefore be stated as follows:

1. There must be a **former suit**.
2. The matter directly and substantially in issue in the subsequent proceeding must have been directly and substantially in issue in the former suit.
3. The former suit must have been between the **same parties**, or parties claiming under them.
4. The parties must have litigated under the **same title**.
5. The former court must have been competent to try the subsequent suit or the issue subsequently raised, as contemplated by Section 11.
6. The matter must have been **heard and finally decided** by the former court.

The Explanations to Section 11 considerably clarify and extend the operation of the doctrine. Of particular importance is **Explanation IV**, which embodies the doctrine of **constructive res judicata**: a matter which might and ought to have been made a ground of attack or defence in the former suit is deemed to have been directly and substantially in issue in that suit. Explanation VIII further gives effect to an issue decided by a court of limited jurisdiction where that court was competent to decide that particular issue.

Historical Evolution of Res Judicata in India

The doctrine did not originate with Section 11 of the CPC, 1908. Its development in India reflects a gradual movement from a relatively narrow statutory rule concerning a previously decided **cause of action** to a broader principle concerned with the **finality of judicial determinations and prevention of repeated litigation**.

1. Code of Civil Procedure, 1859

An early statutory formulation appeared in **Section 2 of the Code of Civil Procedure, 1859 (Act VIII of 1859)**. It provided, in substance, that civil courts should not entertain a suit founded upon a cause of action which had already been heard and determined by a competent court in a former suit.

The provision was comparatively narrow in its wording. Judicial decisions, however, recognised that the statutory language did not exhaust the broader principle of res judicata.

A significant early authority was ***Soorjomonee Dayee v. Suddanund Mohapatter*, (1873) 12 Beng. L.R. 304 (PC)**. The Privy Council recognised that even if the statutory expression "cause of action" did not directly cover the matter in question, the general law of res judicata continued to operate. The decision therefore illustrates an important feature of the early Indian law: **the statutory provision was regarded as an embodiment of a wider principle rather than as its exclusive source**.

This distinction became important in the subsequent development of the law.

2. Code of Civil Procedure, 1877

A significant legislative development came with the **Code of Civil Procedure, 1877**.

Section 13 of the 1877 Code adopted a substantially wider formulation. Instead of concentrating merely upon the same "cause of action", it referred to a **matter directly and substantially in issue** which had been heard and finally decided by a competent court in a former suit between the same parties or parties claiming under them and litigating under the same title.

Thus, the statutory language moved from the identity of the cause of action towards the **identity and final determination of the matter in controversy**.

The Supreme Court in *Gulabchand Chhotalal Parikh v. State of Gujarat*, AIR 1965 SC 1153; (1965) 2 SCR 547, traced this legislative development and noted the significance of the change introduced by Section 13 of the 1877 Code.

3. Code of Civil Procedure, 1882

The **Code of Civil Procedure, 1882** substantially retained the formulation contained in Section 13 of the 1877 Code.

The expression "directly and substantially in issue" thus became firmly established as the central statutory test for determining whether an earlier adjudication would bar subsequent litigation.

The main portion of the present Section 11 is substantially the same as the corresponding provision of Section 13 of the 1882 Code. This continuity was expressly recognised by the Supreme Court in *Gulabchand Chhotalal Parikh*.

4. Code of Civil Procedure, 1908 — Section 11

The **Code of Civil Procedure, 1908**, which came into force on 1 January 1909, carried the doctrine into **Section 11**.

The basic rule remained substantially the same, but the 1908 Code contained a series of **Explanations** which clarified important aspects of the doctrine.

Among the most significant were:

- **Explanation II**, clarifying that the competence of the former court is determined irrespective of provisions relating to a right of appeal;
- **Explanation IV**, codifying constructive res judicata;
- **Explanation V**, dealing with relief claimed but not expressly granted;
- **Explanation VI**, dealing with persons litigating bona fide in respect of public or common private rights; and
- **Explanation VIII**, dealing with issues decided by courts of limited jurisdiction.

The later legislative history also shows that the Explanations were intended to resolve difficulties which had arisen in judicial interpretation. For example, Explanation II was introduced to settle conflicting views concerning whether a previous decision could operate as res judicata where the earlier decision was not subject to the same appellate structure as the subsequent proceeding.

Thus, the 1908 Code did not create an entirely new doctrine. **It consolidated and clarified a principle which had developed through legislation and judicial decisions over several decades.**

Judicial Evolution of the Doctrine

The subsequent development of res judicata has been largely judicial. The Supreme Court has progressively clarified its scope, explaining that the doctrine is concerned not merely with the repetition of an identical suit but with the broader principle that **issues which have been finally adjudicated should not ordinarily be reopened**.

1. Finality of judicial decisions — *Satyadhyan Ghosal v. Deorajin Debi*

In ***Satyadhyan Ghosal v. Deorajin Debi*, AIR 1960 SC 941; (1960) 3 SCR 590**, the Supreme Court gave one of the most important explanations of the doctrine.

The Court observed that the principle of res judicata is based upon the **need to give finality to judicial decisions**. Once a matter concerning a question of fact or law has been finally decided between the parties, the parties cannot ordinarily be permitted to reopen the same matter in subsequent litigation.

Importantly, the Court recognised that the principle is capable of operating not only between two separate suits but also **between successive stages of the same litigation**, where a matter has already been judicially determined and has attained finality at that stage.

The decision therefore helped shift the understanding of res judicata from a narrowly technical statutory bar to a broader principle protecting the **finality and consistency of judicial proceedings**.

At the same time, the doctrine must not be applied mechanically to every interlocutory order. The nature of the earlier determination and the procedural stage at which it was made remain relevant.

2. Res judicata beyond Section 11 — *Gulabchand Chhotalal Parikh v. State of Gujarat*

In ***Gulabchand Chhotalal Parikh v. State of Gujarat*, AIR 1965 SC 1153; (1965) 2 SCR 547**, the Supreme Court examined the relationship between Section 11 and the broader principle of res judicata.

The Court held that **Section 11 is not exhaustive of the general principle of res judicata**. A previous decision on a matter in controversy, arrived at after full contest or after the parties had a fair opportunity to establish their case before a competent court, could operate as res judicata even though the earlier proceeding was not itself a regular suit falling strictly within Section 11.

The Court also held that a decision on merits in a writ proceeding under Article 226 could, in appropriate circumstances, operate as res judicata in a subsequent regular suit between the same parties concerning the same matter.

The decision is important because it demonstrates that **Section 11 is a statutory embodiment of a broader principle of finality**, although the statutory conditions must of course be satisfied where the case is one directly governed by Section 11.

3. Res judicata in writ proceedings — *Daryao v. State of U.P.*

The application of the doctrine to constitutional writ proceedings was authoritatively considered by the Constitution Bench in ***Daryao v. State of U.P.*, AIR 1961 SC 1457; (1962) 1 SCR 574**.

The Supreme Court held, in substance, that where a writ petition under Article 226 had been heard and finally decided on merits, the decision could operate as res judicata in subsequent proceedings concerning the same matter. The Court emphasised the public-policy basis of the doctrine and the necessity of giving finality to judicial decisions.

The significance of *Daryao* lies in demonstrating that the doctrine is **not confined to ordinary civil suits**. Its underlying principle may apply to other judicial proceedings where the requirements of finality and conclusiveness are satisfied.

4. Constructive res judicata — *Devilal Modi* and *State of U.P. v. Nawab Hussain*

A major development in the doctrine was the judicial application of **constructive res judicata**.

Section 11, Explanation IV provides that:

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

The doctrine therefore goes beyond matters which were **actually decided**. It may also prevent a party from raising a matter in later proceedings where that matter **might and ought to have been raised earlier**.

In ***Devilal Modi v. Sales Tax Officer, Ratlam*, AIR 1965 SC 1150; (1965) 1 SCR 686**, the Supreme Court applied constructive res judicata in the context of writ proceedings. The Court recognised

that permitting a party to initiate successive proceedings and raise new grounds each time would defeat the public-policy basis of the doctrine.

The principle was applied and explained further in ***State of U.P. v. Nawab Hussain*, AIR 1977 SC 1680; (1977) 2 SCC 806**. The respondent had challenged his dismissal in an earlier writ petition on certain grounds. A further ground, which was available to him at that time and which he might and ought to have raised, was subsequently sought to be raised in a civil suit. The Supreme Court held that the subsequent ground was barred by constructive res judicata.

The importance of these decisions is considerable: **a litigant cannot ordinarily split his case and reserve available grounds for successive rounds of litigation.**

5. Conditions for application — *Sheodan Singh v. Daryao Kunwar*

In ***Sheodan Singh v. Daryao Kunwar*, AIR 1966 SC 1332; (1966) 3 SCR 300**, the Supreme Court explained the essential conditions for the application of Section 11.

The Court identified, among other requirements, that:

- the matter directly and substantially in issue in the subsequent proceeding must be the same matter which was directly and substantially in issue in the former suit;
- the former suit must have been between the same parties or persons claiming under them;
- the parties must have litigated under the same title;
- the former court must have been competent in the manner contemplated by Section 11; and
- the matter must have been heard and finally decided by that court.

The case also illustrates that the question whether an earlier decision has attained the necessary finality must be examined in the context of the manner in which the earlier litigation and any appeals arising from it were disposed of.

6. Constructive res judicata and abuse of successive litigation — *State of U.P. v. Nawab Hussain*

The decision in *State of U.P. v. Nawab Hussain* is particularly significant in the evolution of constructive res judicata.

The Court explained that the doctrine prevents a party from raising in a subsequent proceeding a ground which was available and ought to have been raised in the earlier proceeding. Otherwise, a litigant could repeatedly challenge the same decision by presenting a succession of different grounds.

The doctrine therefore serves not merely the interest of the opposing party but also the **public interest in preventing multiplicity of proceedings and abuse of the judicial process**.

7. Res judicata and questions of law — *Mathura Prasad Bajoo Jais v. Dossibai N. B. Jeejeebhoy*

The doctrine, however, is not absolute in relation to every question of law.

In ***Mathura Prasad Bajoo Jais v. Dossibai N. B. Jeejeebhoy*, AIR 1971 SC 2355; (1970) 1 SCC 613**, the Supreme Court recognised an important qualification: a pure question of law relating to **jurisdiction** or the legal competence of an act cannot necessarily be treated as conclusively settled merely because it was decided in earlier litigation.

The reason is that a decision which is legally erroneous on a matter going to jurisdiction cannot ordinarily confer jurisdiction where none exists. The doctrine of res judicata is a rule of finality, but it cannot be used to create substantive legal competence where the law does not confer it.

The decision therefore illustrates that **finality must operate within the limits of substantive law and jurisdiction**.

8. Broader doctrine — *Hope Plantations Ltd. v. Taluk Land Board*

In ***Hope Plantations Ltd. v. Taluk Land Board*, AIR 1999 SC 1823; (1999) 5 SCC 590**, the Supreme Court provided a comprehensive discussion of the doctrine.

The Court recognised the connection between res judicata, finality of litigation and related doctrines such as **issue estoppel** and **cause-of-action estoppel**. It also reiterated that the principle embodied in Section 11 is not necessarily exhaustive of the broader doctrine.

The case is important for understanding that res judicata is not merely a technical procedural objection. It embodies a larger policy that **a judicial determination which has attained finality should not ordinarily be reopened between the same parties.**

Present Scope of the Doctrine

The modern law of res judicata can therefore be understood at three interconnected levels.

1. Statutory res judicata

This is the rule contained in **Section 11 CPC**, which applies when all the statutory conditions are satisfied.

2. Constructive res judicata

This is principally embodied in **Explanation IV to Section 11**. It prevents a party from subsequently raising a matter which **might and ought to have been raised** in the former proceeding.

3. General principle of finality

Beyond the strict language of Section 11, courts have recognised the broader principle that a matter which has been finally adjudicated between parties should not ordinarily be reopened merely by changing the form or nature of the subsequent proceeding.

Gulabchand Chhotalal Parikh is particularly important in understanding this broader dimension.

Res Judicata and Res Sub Judice

Res judicata should be distinguished from **res sub judice**, which is dealt with under Section 10 CPC.

- **Res sub judice** applies where a matter is already **pending adjudication** in an earlier suit and prevents the simultaneous trial of the subsequent suit in the circumstances specified in Section 10.
- **Res judicata** applies where the matter has already been **heard and finally decided**.

In simple terms: Section 10 prevents parallel adjudication; Section 11 prevents repeated adjudication.

Conclusion

The law of res judicata in India has evolved from an early statutory rule concerning a previously decided cause of action into a comprehensive doctrine protecting the **finality and conclusiveness of judicial decisions**.

Its legislative development may broadly be traced as follows:

Code of Civil Procedure, 1859 → Section 13 of the CPC, 1877 → Section 13 of the CPC, 1882 → Section 11 of the CPC, 1908, supplemented by detailed Explanations.

The Privy Council's early decisions, particularly *Soorjomonee Dayee v. Suddanund Mohapatter*, demonstrated that the statutory rule did not exhaust the broader principle of finality. The Supreme Court subsequently developed the doctrine through decisions such as *Satyadhyan Ghosal*, *Daryao*, *Gulabchand Chhotalal Parikh*, *Sheodan Singh*, *Devilal Modi*, *State of U.P. v. Nawab Hussain*, *Mathura Prasad* and *Hope Plantations*.

The modern doctrine therefore does more than prevent a party from filing the **same suit twice**. It seeks to ensure that parties do not repeatedly reopen matters already adjudicated, divide their case across successive proceedings, or use procedural differences to circumvent a final judicial determination.

At the same time, res judicata is not an inflexible technical rule. Its application remains subject to the statutory requirements, the nature of the earlier adjudication, the competence of the court, the finality of the decision, and the distinction between matters that can properly be treated as conclusively determined and questions which the law does not permit to be settled merely by an erroneous prior decision.

Ultimately, the doctrine rests upon a simple but fundamental principle of the administration of justice: **litigation must, at some point, come to an end.**

1. **What does Section 30 say about the court's power to order discovery, inspection, or production of documents?**

Section 30 of the Code of Civil Procedure, 1908 empowers the court, either on its own motion or upon an application by a party, to make such orders as may be necessary or reasonable in relation to:

- The delivery and answering of interrogatories.
- The admission of documents and facts.
- The discovery, inspection, production, impounding, and return of documents or other material objects capable of being produced as evidence.
- The issuance of summons to witnesses or other persons required to give evidence or produce documents.

The principal object of Section 30 is to assist the court in discovering the truth and securing all relevant material necessary for the just and expeditious determination of disputes. The provision enables the court to actively regulate the evidentiary process and prevent unnecessary delays during trial.

The powers conferred under Section 30 are discretionary in nature and must be exercised judicially, keeping in view:

- The relevance of the evidence sought.
- The necessity of the order.
- The interests of justice.
- Procedural fairness between the parties.

Section 30 acts as the substantive foundation for various procedural provisions contained in the CPC and must be read together with:

- Order XI – Discovery and Inspection.
- Order XII – Admissions.
- Order XIII – Production, Impounding, and Return of Documents.
- Order XVI – Summoning and Attendance of Witnesses.

These Orders prescribe the detailed procedure through which the powers conferred by Section 30 are exercised during the course of civil proceedings.

The Supreme Court in **Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370**, emphasised that truth is the guiding principle of the judicial process. The Court observed that trial courts should proactively utilise their procedural powers, including those relating to discovery and production of documents, to uncover the truth rather than remain passive spectators when litigants suppress material facts or evidence.

The judgment underscores the importance of judicial intervention in ensuring that parties disclose all relevant documents and evidence necessary for a fair adjudication of disputes.

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Accordingly, Section 30 is a significant procedural provision that equips courts with wide powers to regulate discovery, inspection, and production of evidence so as to facilitate effective and truthful civil adjudication.

2. How is possession delivered in execution of a decree for immovable property, and what happens when the property is occupied by a person other than the judgment-debtor?

The principal provisions governing delivery of possession of immovable property are Order XXI Rules 35 and 36 CPC. The mode of delivery depends upon whether the person in possession is bound by the decree or is entitled to remain in occupation independently of the judgment-debtor.

Under Order XXI Rule 35(1) CPC, where a decree is for the delivery of immovable property, possession is delivered to the decree-holder or the person appointed by him by removing any person bound by the decree who refuses to vacate the property. The rule therefore contemplates actual delivery of possession where the person in occupation is bound by the decree.

Where the decree is for joint possession, Order XXI Rule 35(2) CPC provides for delivery in the manner prescribed by the rule. Where possession cannot be delivered otherwise than by removing a person bound by the decree who refuses to vacate, Order XXI Rule 35(3) CPC permits the Court to remove or cause such person to be removed from the property.

A different situation arises under Order XXI Rule 36 CPC where the property is in the occupancy of a tenant or other person entitled to occupy it and not bound by the decree to relinquish such occupancy. In such a case, the Court does not physically dispossess that occupant in execution. Instead, it delivers possession in the manner prescribed by Order XXI Rule 36 CPC, by affixing a copy of the warrant in a conspicuous place on the property and proclaiming the substance of the decree relating to the property in the prescribed manner.

The important question is therefore whether the occupant is bound by the decree. A person claiming through the judgment-debtor may be liable to be removed in execution where the decree binds the judgment-debtor and the claimant derives possession through him. A person asserting an independent right, title or interest, however, cannot simply be dispossessed by treating him as though he were the judgment-debtor.

Where a person who is not bound by the decree resists or obstructs delivery of possession, the decree-holder may invoke Order XXI Rule 97 CPC. The executing Court is then required to adjudicate the resistance or obstruction in accordance with Order XXI Rules 97 and 98 CPC, read with Order XXI Rule 101 CPC. Questions relating to the right, title or interest of the parties to the proceeding, including an obstructionist, are to be determined by the executing Court in those proceedings and not by a separate suit.

The Supreme Court in **Brahmdeo Choudhary v. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694**, explained that Order XXI Rules 97–101 CPC constitute a comprehensive mechanism for resolving disputes arising in execution of a decree for possession. A person resisting or obstructing delivery cannot simply be removed by bypassing the statutory adjudicatory procedure. The Court has subsequently reiterated that where resistance or obstruction by a stranger or encroacher arises, the executing Court must adopt the procedure contemplated by Order XXI Rules 97–101 CPC.

Conversely, where a person claiming an independent right, title or interest has already been dispossessed in execution, Order XXI Rule 99 CPC provides the remedy for approaching the executing Court. Upon such an application, the executing Court adjudicates the claim under Order XXI Rules 100 and 101 CPC, and may order restoration of possession where the applicant establishes the requisite right.

Thus, a person bound by the decree may be removed under Order XXI Rule 35 CPC; a person entitled to remain in occupation and not bound by the decree is dealt with under Order XXI Rule 36 CPC; and a person claiming an independent right who resists or obstructs execution is dealt with through the adjudicatory mechanism under Order XXI Rules 97–101 CPC. The executing Court cannot use the machinery for delivery of possession to circumvent the statutory safeguards applicable to third-party claims.

3. What is the procedure for a suit for foreclosure, sale or redemption of a mortgage under Order XXXIV?

Suits relating to mortgages of immovable property are governed principally by Order XXXIV CPC, read with the relevant provisions of the Transfer of Property Act, 1882. Under Rule 1, persons having an interest in the mortgage-security or in the right of redemption must ordinarily be joined as parties.

In a foreclosure suit, where the mortgagee succeeds, Rule 2 requires the court to pass a preliminary decree determining or directing an account of the amount due under the mortgage and fixing a time for payment. If the amount is not paid within the time fixed, the mortgagee may apply for a final decree debarring the mortgagor from all right to redeem.

In a suit for sale, Rule 4 provides for a preliminary decree determining the amount due and fixing the time for payment. If payment is not made, the mortgagee may apply for a final decree directing that the mortgaged property, or a sufficient part of it, be sold and the sale proceeds applied towards the amount due, costs and other permissible amounts.

In a redemption suit, where the mortgagor succeeds, Rule 7 requires the court to pass a preliminary decree determining or directing an account of the amount due to the mortgagee and fixing a time for payment. Upon payment, the mortgagee is required to deliver the mortgage documents, re-transfer the property free from the mortgage and, where necessary, put the mortgagor in possession. If the amount is not paid within the prescribed time, the mortgagee

may seek the appropriate final decree under Rule 8, including a decree for sale or foreclosure depending upon the nature of the mortgage.

Thus, Order XXXIV generally contemplates a preliminary decree first determining the parties' rights and the amount payable, followed, where necessary, by a final decree giving effect to the consequences of payment or default.

4. When can a defendant be required to furnish security before judgment?

Under Order XXXVIII Rule 5 CPC, the court may require a defendant to furnish security before judgment where it is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court.

The court must first be satisfied that there is a reasonable prospect of a decree being passed in favour of the plaintiff and that the statutory conditions of Rule 5 are fulfilled. If so, the court may direct the defendant, within a time fixed by it, either to furnish security for the amount that may be specified in the order or to appear and show cause why security should not be furnished.

The court may also direct the defendant to furnish security where the property proposed to be disposed of or removed is insufficient to satisfy a possible decree. The power is discretionary and is intended to prevent a defendant from defeating the execution of a decree by deliberately placing assets beyond the reach of the court.

In **Raman Tech. & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302**, the Supreme Court held that the power under Order XXXVIII Rule 5 is a drastic and extraordinary power which must be exercised sparingly and strictly in accordance with the Rule. A plaintiff must establish not merely a prima facie case but also the defendant's intention to obstruct or delay execution by removing or disposing of property.

Thus, a defendant cannot be required to furnish security merely because a suit has been filed or because the plaintiff apprehends that the decree may ultimately remain unsatisfied; the specific statutory requirements of Rule 5 must be established.

5. Can a Court allow amendment of pleadings to cure a technical defect or omission?

Yes. Order VI Rule 17 CPC empowers the Court to allow amendment of pleadings at any stage of the proceedings when the amendment is necessary for determining the real questions in controversy between the parties.

This power may be used to correct a bona fide mistake, technical defect, accidental omission or inadequacy in the pleading, particularly where the amendment helps the Court determine the real dispute and does not cause prejudice that cannot adequately be compensated by costs or otherwise.

However, the power is subject to an important statutory restriction. The proviso to Order VI Rule 17 provides that after the trial has commenced, an amendment shall not be allowed unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before commencement of the trial. The requirement is mandatory. In **Vidyabai v. Padmalatha, (2009) 2 SCC 409**, the Supreme Court held that the proviso restricts the Court's jurisdiction to permit an amendment after commencement of trial unless the due-diligence requirement is satisfied.

The Court nevertheless retains a liberal approach towards amendments that genuinely assist in deciding the real controversy. In **Revajeetu Builders & Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84**, the Supreme Court identified the principal considerations governing the exercise of the power, including the necessity of the amendment, bona fides, prejudice, multiplicity of proceedings and whether the amendment fundamentally changes the nature of the case.

Therefore, a technical defect or omission can ordinarily be corrected where justice requires it, but an amendment sought after commencement of trial must additionally satisfy the statutory test of due diligence.

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