

(Code of Civil Procedure (CPC))

SUITS OF CIVIL NATURE

Section 9, Code of Civil Procedure, 1908

Introduction

Section 9 of the Code of Civil Procedure deals with the subject-matter jurisdiction of Civil Courts. It lays down the general rule that Civil Courts have jurisdiction to try all suits of a civil nature unless their jurisdiction is expressly or impliedly barred.

The jurisdiction of Civil Courts is very wide. Exclusion of their jurisdiction is an exception. Therefore, such exclusion should not be readily presumed.

Statutory Provision

Section 9 provides that Civil Courts shall have jurisdiction to try all suits of a civil nature except those suits whose cognizance is expressly or impliedly barred.

Thus, a Civil Court can try a suit when the suit is of a civil nature and its cognizance is not expressly or impliedly barred.

Basis of Section 9

Section 9 is based on the maxim:

Ubi jus ibi remedium

It means that where there is a right, there is a remedy.

Where a person has a civil right and that right is violated, he can ordinarily approach a Civil Court for relief.

In **Ganga Bai v. Vijay Kumar**, the Supreme Court observed that a person has an inherent right to institute a civil suit unless its cognizance is barred by law.

Meaning of Suit of Civil Nature

A suit is of a civil nature when its main object is the enforcement or protection of a civil right.

Civil rights generally relate to property, possession, contract, office, status, inheritance, marriage, adoption, guardianship, easement, right to worship, management of religious property, damages, accounts and injunction.

The expression “civil nature” is wider than the expression “civil proceeding.” A suit may be of a civil nature even though it also involves a religious, social, customary or caste-related question.

Test to Determine Civil Nature

To determine whether a suit is of a civil nature, the Court should examine the cause of action, the main relief claimed, the principal question involved and whether the plaintiff is seeking enforcement of a legal right.

The form in which the suit is drafted is not conclusive. The Court must examine the real nature of the dispute and the right which the plaintiff seeks to enforce.

Principal Question Test

A suit may involve civil as well as religious, social or caste-related questions.

In such cases, the Court should identify the principal question involved in the suit.

If the principal question concerns a civil right, the suit is of a civil nature even though the Court may also have to decide a religious, customary or caste-related question.

However, where the principal or only question is purely religious, social or ceremonial and no civil right is affected, the suit is not of a civil nature.

Religious Disputes

A Civil Court does not ordinarily decide purely religious or theological questions.

However, a religious dispute becomes a civil dispute when it affects property, office, right to worship, management of a religious institution, right to perform religious services, legal status, receipt of offerings or any other civil benefit.

Therefore, the mere involvement of a religious question does not exclude the jurisdiction of the Civil Court. The Court must examine whether the religious question is connected with an enforceable civil right.

Right to Worship

The right to worship is generally treated as a civil right.

A suit may be filed where a person is wrongfully prevented from entering a place of worship, offering worship, performing religious services or participating in worship according to an established right or custom.

However, a suit merely seeking a declaration as to which religious ritual or belief is correct is not ordinarily maintainable unless some civil right is affected.

Religious Office

Explanation I to Section 9

Explanation I provides that a suit relating to a right to property or a right to an office is a suit of a civil nature even if the decision of that right depends entirely upon questions relating to religious rites or ceremonies.

Therefore, a dispute relating to the office of a Mahant, Shebait, priest, Mutawalli, trustee or manager of a religious institution may be tried by a Civil Court.

The Court may decide questions relating to religious rites or ceremonies where such questions are necessary for deciding the right to property or office.

Religious Office Without Fees

Explanation II to Section 9

Explanation II provides that a suit relating to a religious office remains a suit of a civil nature even if no fees or salary are attached to the office.

It is also not necessary that the office should be attached to a particular place.

Therefore, financial benefit is not necessary for treating a religious office as a civil right. The right to hold the office itself is sufficient.

Mere Honour or Dignity

A claim relating merely to honour, dignity, prestige or ceremonial precedence is ordinarily not a suit of a civil nature.

For example, a claim that a religious head should be carried in a procession in a particular manner may not be maintainable where no right to property, office, status or other legal right is involved.

However, if the claim to honour or precedence is connected with a legal office, property or enforceable status, the suit may be of a civil nature.

Caste-Related Disputes

A purely caste-based question is not ordinarily a suit of a civil nature.

Questions such as which caste is superior, who should receive social precedence or who should be treated as a caste leader do not ordinarily involve civil rights.

However, a caste-related dispute may be of a civil nature where it affects property, office, membership carrying legal rights, access to a public or religious place, damages or any other legally enforceable right.

Therefore, the Court should examine the civil consequences of the dispute rather than merely its caste character.

Suits Ordinarily Treated as Civil

The following suits are generally treated as suits of a civil nature:

- Suit for declaration of title
- Suit for possession
- Suit for partition
- Suit for injunction
- Suit relating to contracts
- Suit for damages
- Suit relating to inheritance or succession
- Suit concerning marriage, adoption or guardianship
- Suit relating to easement
- Suit concerning religious property
- Suit relating to a religious office
- Suit for enforcement of the right to worship
- Suit for accounts
- Suit concerning management of a religious or charitable institution

This list is only illustrative and not exhaustive.

Any suit involving the enforcement of a civil right may fall within Section 9 unless its cognizance is barred by law.

Matters Not Ordinarily of Civil Nature

The following matters are not ordinarily treated as suits of a civil nature:

- Purely religious or theological disputes
- Disputes concerning only the correctness of religious rituals
- Questions relating merely to social honour or prestige
- Pure caste-precedence disputes
- Moral obligations which are not legally enforceable
- Political disputes having no civil consequences
- Claims for voluntary religious contributions where no legal obligation exists

The real test is whether the plaintiff is seeking enforcement of a legal right.

Express Bar of Jurisdiction

A suit is expressly barred when a statute clearly provides that a Civil Court shall not have jurisdiction over a particular matter.

A statute may use expressions such as:

- “No Civil Court shall have jurisdiction”
- “No suit shall lie”
- “The decision of the authority shall be final”
- “The matter shall be decided only by the specified tribunal”

Where such clear words are used, the Civil Court must give effect to the statutory bar.

For example, if a special statute provides that a particular dispute shall be decided only by a special tribunal, the Civil Court cannot ordinarily entertain a suit regarding that dispute.

Implied Bar of Jurisdiction

Jurisdiction may also be barred by necessary implication even where the statute does not expressly exclude the Civil Court.

An implied bar may be inferred where the statute creates a special right or liability, establishes a special tribunal, provides a complete procedure, provides appeals and revisions, gives finality to the decision of the special authority and enables that authority to grant adequate relief.

In such cases, the Court must examine the entire scheme of the statute.

The intention to exclude the jurisdiction of the Civil Court must be clear from the provisions and object of the special law.

A bar should not be inferred merely because a special tribunal has been created.

Difference Between Express and Implied Bar

- An express bar arises from clear and direct statutory words excluding the jurisdiction of the Civil Court. An implied bar does not arise from any direct words. It is inferred from the complete scheme, purpose and remedies provided by the statute.
- In the case of an express bar, the Court mainly examines the language used in the statute. In the case of an implied bar, the Court examines the entire statutory scheme, the nature of the right, the forum created and the remedies provided.

Presumption in Favour of Civil Court Jurisdiction

There is a general presumption in favour of the jurisdiction of Civil Courts. Therefore, exclusion of jurisdiction must be strictly interpreted.

The burden lies upon the party who alleges that the jurisdiction of the Civil Court is barred.

Where two interpretations are possible, the Court ordinarily prefers the interpretation which preserves the jurisdiction of the Civil Court. The mere existence of a special tribunal does not automatically exclude the jurisdiction of the Civil Court. There must be a clear legislative intention to make the remedy before the special tribunal exclusive.

Dhulabhai v. State of Madhya Pradesh

In ***Dhulabhai v. State of Madhya Pradesh***, the Supreme Court laid down important principles regarding exclusion of Civil Court jurisdiction.

- Where a special statute gives finality to the decision of a tribunal and provides an adequate remedy, the jurisdiction of the Civil Court may be excluded.
- Even where jurisdiction is barred, the Civil Court may interfere if the tribunal has not followed the provisions of the statute, has violated fundamental principles of judicial procedure or has acted without jurisdiction.
- Where there is no express bar, the Court must examine the scheme of the statute, the remedy provided, the powers of the tribunal and whether the statutory remedy was intended to be exclusive. Exclusion of the jurisdiction of Civil Courts should not be readily inferred.

Civil Court Jurisdiction Despite Statutory Bar

Even where the jurisdiction of the Civil Court is expressly or impliedly barred, the Civil Court may examine the matter in certain exceptional situations.

Such situations may arise where the authority acted without jurisdiction, exercised a power not given by the statute, violated mandatory provisions of the statute, ignored fundamental principles of judicial procedure, passed an order obtained by fraud or where the validity of the statute itself is challenged.

However, a mere error of fact or law committed by the tribunal does not always give jurisdiction to the Civil Court.

In such a case, the proper remedy may be an appeal, revision or review under the special statute.

If the dispute, in substance, falls within the exclusive jurisdiction of a special authority, the plaintiff cannot avoid the statutory bar merely by changing the language of the plaint.

Conclusion

Section 9 gives Civil Courts jurisdiction to try all suits involving civil rights unless such jurisdiction is excluded by law.



A suit remains a suit of a civil nature even where religious, caste-related or customary questions are involved, provided that the principal issue concerns a civil right such as property, office, status, worship or management.

The two main questions under Section 9 are whether the suit is of a civil nature and whether its cognizance is expressly or impliedly barred.

Where the suit involves an enforceable civil right and there is no clear statutory bar, the Civil Court has jurisdiction to try it.