



FACULTY OF JURIDICAL SCIENCES

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COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

SUBJECT CODE: BBL 604

Lecture-24



RELEVANCY OF CERTAIN JUDGMENTS IN PROBATE ETC. JURISDICTION [Sec. 41]

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

The general principle is that a person is not bound by any transaction to which he is not a party. Therefore, judgment between two parties (judgment *inter partes*) is binding upon a third party. However, judgments may be either

1. judgments *in personam*; or
2. judgments *in rem*.

In the above-mentioned general rule, 'judgment' means 'judgment *in personam*'.

Judgments *In Personam*

A judgment *in personam* is a judgment between the parties to a contract, tort crime.

Judgments *in personam* bind the parties and their representatives-in interest. Such a judgment is not relevant under s. 41, in any subsequent proceeding.

Judgments *In Rem*

A judgment *in rem* is a judgment against the whole world. Taylor defines 'judgment *in rem*' as an adjudication pronounced, as its name indeed denotes upon the status of some particular subject-matter, by a tribunal having competent authority for the purpose. A judgment *in rem* under this section is conclusive in a civil as well as in criminal proceeding. Both the proceedings may run simultaneously. Judgments mentioned in S. 41, viz., judgments of courts exercising probate, matrimonial, admiralty or insolvency jurisdictions, are judgments *in rem*.

A judgment *in rem* is conclusive proof of matters showing that:

1. it has conferred legal character; or
2. it has declared that person has such legal character; or

3. it has declared that such legal character has ceased to exist.

‘Legal character’ means a ‘legal status’. To say that a person is not a partner of a firm is not to declare his status or legal character; it is merely to declare his position with respect to the particular firm.

Probate Jurisdiction:

Probate jurisdiction means jurisdiction of a court under the Indian Succession Act, 1925 in respect of testamentary and intestate matters. By exercising probate jurisdiction the court can pronounce the genuineness of will of a deceased person and grant letter of probate in favour of a person who may act for the deceased in execution of his will. The court must also satisfy its conscience before it passes an order. A judgment by a probate is a judgment *in rem* by which legal character of a person is granted. A judgment of a court of probate is conclusive proof and is binding on the entire world. The grant of probate is the decree of a court which no other court can set aside except for fraud or want of jurisdiction

Matrimonial Jurisdiction

A court having matrimonial jurisdiction can decide matrimonial causes under various Acts. By virtue of this jurisdiction the court can decide the legal status of a person whether she is married or widow or divorcee. The judgment of a Matrimonial court is judgment *in rem* and is admissible under s. 41. A decree of nullity and divorce under Marriage Law has the same effect.

Admiralty Jurisdiction

Admiralty jurisdiction is exercised by certain High Courts under the Letters Patent. An Admiralty Court decides cases arising out of war claims. The finding of a court of admiralty jurisdiction is a judgment *in rem*

Insolvency Jurisdiction

A court having insolvency jurisdiction exercised its power under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. Now the jurisdiction is exercised under the Insolvency Code. By exercising insolvency jurisdiction the court can determine legal status of a person whether he is insolvent or he is discharged from insolvency or annulment of his insolvency. A judgment of an insolvency court is a judgment *in rem* and binding on all.

Effect of Judgements *in Rem*

Such judgment, Such judgment, order or decree is conclusive proof

1. that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
2. that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree declares it to have accrued to that person;
3. that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and
4. that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.