



FACULTY OF JURIDICAL SCIENCES

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Lecture-25



Relevancy and Effect of Judgments, Orders or Decrees other than those mentioned in Sec. 41 [Sec. 42]

Judgments, orders or decrees other than those mentioned in, sec. 41 are relevant if they relate to matters of a public nature relevant to the enquiry. But such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues *B* for trespass on his land.

B alleges the existence of a public right of way over the land, which *A* denies. The existence of a decree in favour of the defendant in a suit by *A* against *C* for a trespass on the same land, in which *C* alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Under Sec. 42, judgments, orders or decrees other than those mentioned in s. 41 are relevant if they relate to the matters of public nature whether between the same parties or not. Thus, this section is another exception to the general rule that no one should be affected by a judgment to which he is not a party. Under this section, judgments neither *inter parties* nor *in rem* are relevant, if they relate to matters of public nature under inquiry.

The words 'matters of public nature' means matters affecting entire population or at least a large section of the population. It should be remembered that judgments relating to matters of public nature relevant under s. 42 neither work as *res judicata* nor they are conclusive as judgment *in rem*. They can be used as corroborating evidence. Such evidence may not be between the same parties, but they are related only to the matters of public nature relevant to the inquiry.

Relevancy of Judgments other than those mentioned in secs. 40-42 [sec. 43]

Judgments, orders or decrees, other than those mentioned in secs. 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is

relevant under some other provision of this Act. Sec. 43 provides that if a judgment is not relevant under secs. 40, 41 or 42 it will not be relevant.

Illustrations

(a) *A* and *B* separately sue *C* for a libel which reflects upon each of them. *C*, in each case, says that the matter alleged to be libelous is true. The circumstances are such that it is probably true in each case, or in neither. *A* obtains a decree against *C* for damages on the ground that *C* failed to make out his justification. The fact is irrelevant as between *B* and *C*.

(b) *A* prosecutes *B* for adultery with *C*, *A*'s wife. *B* denies that *C* is *A*'s wife. But the Court convicts *B* of adultery. Afterwards, *C* is prosecuted for bigamy in marrying *B* during *A*'s lifetime. *C* says that she never was *A*'s wife. The judgment against *B* is irrelevant as against *C*.

(c) *A* prosecutes *B* for stealing a cow from him. *B* is convicted. *A* afterwards sues *C* for the cow, which *B* had sold to him before his conviction. As between *A* and *C*, the judgment against *B* is irrelevant.

However, such judgment may become relevant if the existence of judgment itself is a fact in issue or is relevant under some other provisions of the Act. This section expressly contemplates cases in which a judgment itself is fact in issue or a relevant fact. The illustrations (d) to (f) appended to sec. 43 show that judgments have become relevant under some other provisions (*i.e.*, secs. 6 to 55) of the Act.

Illustrations

(d) *A* has obtained a decree for the possession of land against *B*. *C*, *B*'s son, murders *A* in consequence. The existence of the judgment is relevant, as showing motive for a crime.

(e) *A* is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) *A* is tried for the murder of *B*.

The fact that *B* prosecuted *A* for libel and that *A* was convicted and sentenced is relevant under Sec. 8 as showing the motive for the fact in issue.

Thus, a judgment not *inter partes* is admissible if its existence is a relevant fact. This section makes it clear that judgments other than those mentioned in Ss. 40, 41 or 42 are of themselves irrelevant. Bombay High Court in *Laxshman Govind vs. Amrit Gopal* has held a judgment not *inter partes* is inadmissible to prove the fact stated therein. However, s. 43 provides that the existence of the judgment may become relevant under some other provisions of the Act, in which case, it will be admissible in evidence in a case not *inter partes*.

A judgment not *inter partes* is admissible if its existence is a relevant fact. Thus, the findings in civil proceeding are not binding on a subsequent prosecution, and judgment in a criminal case cannot be relied on as binding in civil case. For example, judgment of a Criminal Court would not be relevant in the claim petition under the Motor Vehicle Act

FRAUD OR COLLISION IN OBTAINING JUDGMENT OR LACK OF COMPETENCY OF COURT [SEC. 44]

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under secs. 40, 41 or 42, which has been proved by the adverse party,

1. was delivered by a court not competent to deliver it, or
2. was obtained by fraud or collusion.

Sec. 44 gives an opportunity to the adverse party to raise questions that the judgment obtained under secs. 40, 41 and 42 by the first party in the previous suit or proceeding on the grounds mentioned in sec. 44. Sec. 44 is not applicable to sec. 43.

For Example: though the genuineness of the will cannot be challenged once the probate is issued under section 41, but the judgment can be challenged that it was obtained by fraud or collusion.

The Competency on the part of court means lack of jurisdiction. Thus if any court without jurisdiction gives judgment on any matter it is null and void. It cannot be used as evidence as relevant.